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THIRD SESSION—TWENTY-EIGHTH PARLIAMENT

1970

THE SENATE OF CANADA

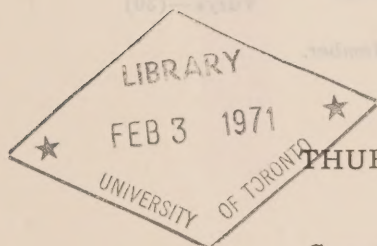
PROCEEDINGS OF THE

STANDING SENATE COMMITTEE ON

HEALTH, WELFARE AND SCIENCE

The Honourable H. J. ROBICHAUD, P.C., Acting Chairman

No. 1



THURSDAY, DECEMBER 10, 1970

Complete Proceedings on Bill C-188,
intituled:

“An Act to amend the Merchant Seamen Compensation Act
and to amend an Act to amend the Merchant Seamen
Compensation Act”

REPORT OF THE COMMITTEE

(Appendix and Witness:—See Minutes of Proceedings)

THE STANDING COMMITTEE ON
HEALTH, WELFARE AND SCIENCE

The Honourable H. J. Robichaud, P.C.,
Acting Chairman

The Honourable Senators:

Belisle	Inman
Blois	Kinnear
Bourget	Lamontagne
Cameron	Macdonald (<i>Cape</i>
Carter	<i>Breton</i>)
Connolly (<i>Halifax North</i>)	Martin*
Croll	McGrand
Denis	Michaud
Fergusson	Phillips (<i>Prince</i>)
Flynn*	Quart
Fournier (<i>Madawaska-</i>	Robichaud
<i>Restigouche</i>)	Roebuck
Fournier (<i>de Lanaudière</i>)	Smith
Gladstone	Sullivan
Hastings	Thompson
Hays	Yuzyk—(30)

**Ex officio Member.*

(Quorum 7)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, Tuesday, December 8, 1970:

Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Smith, seconded by the Honourable Senator Gouin, for the second reading of the Bill C-188, intituled: "An Act to amend the Merchant Seamen Compensation Act and to amend an Act to amend the Merchant Seamen Compensation Act".

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Smith moved, seconded by the Honourable Senator Cook, that the Bill be referred to the Standing Senate Committee on Health, Welfare and Science.

The question being put on the motion, it was—
Resolved in the affirmative.

Robert Fortier
Clerk of the Senate

Minutes of Proceedings

Thursday, December 10, 1970

(1)

Pursuant to adjournment and notice the Standing Senate Committee on Health, Welfare and Science met this day at 10:00 a.m.

Present: The Honourable Senators: Carter, Croll, Flynn, Inman, Kinnear, Macdonald (*Cape Breton*), Robichaud and Smith. (8)

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

On Motion of the Honourable Senator Croll it was Resolved that the Honourable Senator Robichaud be elected *Acting Chairman*.

On Motion of the Honourable Senator Croll it was Resolved to print 800 copies in English and 300 copies in French of these proceedings.

The Committee proceeded to the consideration of Bill C-188, intituled: "An Act to amend the Merchant Seamen Compensation Act and to amend an Act to amend the Merchant Seamen Compensation Act".

The following witness was heard in explanation of the Bill:

Mr. Howard Currie, Director, *Accident Prevention and Compensation Branch, Department of Labour*.

On Motion of the Honourable Senator Croll it was Resolved that the statistical information to be supplied by the Department of Labour be printed as an Appendix to these proceedings.

On Motion of the Honourable Senator Inman it was Resolved to report the said Bill without amendment.

At 11:25 a.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Denis Bouffard,
Clerk of the Committee.

Report of the Committee

Thursday, December 10, 1970.

The Standing Senate Committee on Health, Welfare and Science to which was referred the Bill C-188, intituled: "An Act to amend the Merchant Seamen Compensation Act and to amend an Act to amend the Merchant Seaman Compensation Act," has in obedience to the order of reference of December 8, 1970, examined the said Bill and now reports the same without amendment.

Respectfully submitted.

H. J. Robichaud,
Acting Chairman.

The Standing Senate Committee on Health, Welfare and Science

Evidence

Ottawa, Thursday, December 10, 1970

[Text]

The Standing Senate Committee on Health, Welfare and Science, to which was referred Bill C-188, to amend the Merchant Seamen Compensation Act and to amend an Act to amend the Merchant Seamen Compensation Act, met this day at 10 a.m. to give consideration to the bill.

Senator Hédard Robichaud (*Acting Chairman*) in the Chair.

The Acting Chairman: Honourable senators, I see a quorum. This morning we are dealing with Bill C-188 to amend the Merchant Seamen Compensation Act and to amend an Act to amend the Merchant Seamen Compensation Act, and we have before us as witness Mr. Howard Currie, Director of the Accident Prevention and Compensation Branch, Department of Labour. I understand Mr. Currie is prepared to answer any questions which senators may wish to ask him.

Senator Carter: Does Mr. Currie wish to make an opening statement? I know I have some questions.

Mr. Howard Currie, Director of Accident Prevention and Compensation Branch, Department of Labour: Mr. Chairman and honourable senators, I do not have a prepared statement but, if you wish, a short commentary might be in order.

The purpose of this bill primarily is to upgrade the monetary benefits provided under the legislation. This happens periodically every three or four years. It was done to enable us to try to keep abreast of the increasing expenses to the recipients of these allowances, and also to make them comparable with similar benefits paid under the provincial workmen's compensation acts in the three Maritime provinces. The reason we cite the three Maritime provinces is that the practical effect of this legislation is limited to the people who work aboard ships plying from the three Maritime provinces, not exclusively but primarily. All other provinces under their workmen's compensation acts provide this kind of protection, so it is not necessary for the Merchant Seamen Compensation Act to be applied, for example, to merchant seamen operating out of British Columbia, Ontario or Manitoba. So, as I say, first of all we would wish to upgrade the rates of monetary benefits.

Senator Carter: It applies only to those provinces who have not covered merchant seamen in their workmen's compensation acts?

Mr. Currie: That is correct. It is really a complementary piece of legislation.

Secondly, the bill intends to amend the act to allow for a swifter means of making these adjustments in the future. In the past, as I said, we came before Parliament every three or four years to bring these rates up to date, sometimes establishing a little higher rate knowing, of course, that within a short while the provincial workmen's compensation boards would be making these adjustments. But we have always required an Act of Parliament, and we felt that this could be speeded up to enable us to make the necessary adjustments annually or every other year, as required, by permitting the Governor in Council by regulation to change these rates from time to time, always relating them to the prevailing benefits in the Maritime provinces.

There are two or three other housekeeping amendments merely to tidy up the act and to improve the wording here and there, but I think, Mr. Chairman, that those are the main features that I would comment upon.

The Acting Chairman: Thank you, Mr. Currie.

Senator Carter: I realize, Mr. Chairman, that Mr. Currie may not be able to give detailed answers to the questions I want to ask, but if that should be the case, I would like to have an understanding that he will submit the answers to the committee so that they may be incorporated in our minutes.

The Acting Chairman: Thank you.

Senator Carter: Mr. Currie, how many people are affected by this act?

Mr. Currie: At the present time, approximately 2,400 to 2,500 that have the protection of this legislation.

Senator Carter: Can you give a breakdown of that, as to how many of these are orphans, widows, invalid heads of families?

Mr. Currie: I misunderstood your question, senator. I thought in your original question you were referring to how many seamen were protected by the act at the present time. There are some 2,400, as I have said. The number of recipients of benefits under the act is much less.

I have a list here. There are probably between 25 and 28 widows now receiving pensions under this legislation; and there are about 35 children receiving allowances.

Senator Inman: Do children receive them up to the age of 18?

Mr. Currie: If they are attending school they may have it beyond 18, to age 21.

Senator Smith: How many of these children are orphans? Do you have those figures? I am interested in the figures because one of our members, Senator Desruisseaux, asked that question and I could not answer it. It is 25 to 28 widows and 35 children.

Mr. Currie: At the present time. Do you wish to actually identify the recipients?

Senator Smith: No. Of the 35 children now receiving benefits, what proportion of them would be orphaned children, in order to create a situation in which you would have to make a judgment on a full-time housekeeper or aunt coming in to keep house?

Mr. Currie: We could tell you how many widows with children or widows without children, how many orphans, and so on.

Senator Smith: You will send us that information?

Mr. Currie: Yes, we will be glad to do that.

Senator Carter: You will provide that to the committee so that it can be included in the minutes of our proceedings?

Mr. Currie: Yes. The number of widows and the number of children and orphans?

Senator Carter: Yes. Children without parents—and inviolated heads of family would be important too, because that is taken care of under the act.

Mr. Currie: can you tell the committee who are the present members of the Merchant Seamen Compensation Board?

Mr. Currie: Yes. The Chairman of the Board is Mr. Jean-Pierre Després, Assistant Deputy Minister of the Department of Labour; the Vice-Chairman is Captain George Graves, a senior officer, Marine Services Branch, Department of Transport; and the third member is myself.

Senator Carter: These are all located here in Ottawa?

Mr. Currie: That is correct.

Senator Carter: How often does the board meet?

Mr. Currie: Perhaps three to four times a year.

Senator Carter: How does the board operate? Does the board have agents in the provinces? What is the liaison between the board here in Ottawa and the recipient down in the Maritimes?

Mr. Currie: As you are probably aware, we have long-standing arrangements with each of the provincial Work-

men's Compensation Boards under another statute. I am referring to the Government Employees Compensation Act, which applies to all persons employed in the Public Service of Canada. This federal statute enables us, the federal Public Service, to have the benefits of workmen's compensation, but the actual processing and adjudicating of claims is done through each of the provincial Workmen's Compensation Boards, because our statute allows them to do so. Consequently, we are able to call upon the same resources when administering the Merchant Seamen Compensation Act.

I will just trace a hypothetical case, to illustrate the sort of things you want to know. A man is injured in the course of his employment, perhaps severely—he falls down a hatchway or some heavy equipment injures him. He is immediately taken to the nearest hospital for medical attention and a claim is filed with us. From then on we will watch the progress of the man's recovery and rehabilitation. If he requires any special medical attention, this is ordered and it is paid for by the shipping company, that is, his employer. Should it appear that he is going to have a permanent disability, we will ask the nearest Workmen's Compensation Board to examine this man, on our behalf, through their regular medical panel. They will see him and even advise us as to his medical or vocational rehabilitation. They are most co-operative.

Finally, if and when it is determined that the man is not going to recover fully and will have a permanent disability, the Workmen's Compensation Board will give use the benefit of their opinion as to the extent of his permanent disability and what sort of pension they would grant if he were under their jurisdiction. This is all supplied to the board by experts in the workmen's compensation field.

Then, based on this evidence and the evidence of the doctor who attended the seamen and any other information we require, the board in Ottawa awards a permanent disability allowance which is granted to the man and which is required to be paid by his employer.

Senator Croll: These people are covered in every province under the Workmen's Compensation Act, except in the Maritime provinces?

Mr. Currie: That is correct—with one minor qualification. In the Province of Quebec the Workmen's Compensation Act of that province covers this category of worker only if he is a resident of or hired in the Province of Quebec.

Senator Croll: What is the thinking behind the Maritime provinces in not covering them in the same way?

Mr. Currie: There are some good theoretical thoughts behind this. Being a native Ottawan and a landlubber, perhaps it is not for me to say why, but from my reading and understanding of these things I would suggest this, that the risks and costs are potentially rather great and, as you know, underlying each of the provincial workmen's compensation acts is the principle of mutual collective liability. All industries covered by provincial statute contribute to one accident fund, which is indivisible—one fund. The rate of assessment varies according to the

degree of hazard in the particular industry, so that steelworkers perhaps have a higher assessment than those who are engaged in the manufacture of bicycles, but it is still one fund.

In the case of the Atlantic provinces, their reserve funds have never been very substantial. It was for the same reason that until a year or so ago Nova Scotia, for example, never did cover fishermen under the regular provisions of their Workmen's Compensation Act. It was a separate part of their legislation administered through the insurance companies.

Today in the other Atlantic provinces, generally speaking, fishermen may only be covered on application—it is not mandatory—for the same reason, that there have been so many serious accidents that this is a considerable drain on the accident fund, and it was felt that they just could not incorporate this into their general workmen's compensation system. This is my reading of the record.

Senator Croll: What does this mean in terms of money? What is a rough figure of the moneys involved?

Mr. Currie: I could not venture a figure, Senator Croll.

Senator Croll: Is a figure available?

Mr. Currie: I doubt it.

Senator Smith: I wonder if I might make a comment here, Mr. Chairman. There are many people on the provincial scene today, like Senator Kinley who was mainly responsible for carrying through a campaign which resulted in the fishermen of Nova Scotia receiving some of the benefits of the Nova Scotia Workmen's Compensation Act. Having said that, I think I can help you in your answer to Senator Croll by pointing out that there have been disasters. In one August gale around Sable Island from 60 to 90 fishermen were lost, most of them from Lunenburg. When there are losses of that magnitude this can be awfully expensive. We are still losing men. I think Senator Robichaud, who was at one time the Minister of Fisheries, knows the kind of losses there have been.

The Acting Chairman: In Northumberland Strait there was a similar incident with a loss of twenty lives. Just a week ago seven fishermen were drowned in a storm. The risk is heavy.

Senator Smith: There was the terrible tragedy you had on your coast some years ago. There is a memorial erected to those men.

The Acting Chairman: Yes, that was the tragedy in Northumberland Strait to which I was referring.

Senator Smith: Such losses can be a heavy burden upon a workmen's compensation board. This system now covers the fishermen of Nova Scotia—please correct me if I am wrong—but the ship owners protect themselves by buying insurance, and it is expensive. It is not to the advantage of the men who go to sea to have someone carry them. I think it is a great thing that the federal Government some years ago stepped into this matter and filled in this gap. I think we shall have to wait for quite a while before the compensation boards of these smaller and "poorer" provinces will be able to take that risk.

That may help, or it may not.

Senator Croll: It certainly does.

Senator Carter: We are getting off the track. We are talking about the fishermen. The statistics Mr. Currie quoted—28 widows and 35 children—do not bear this out at all. There is no heavy drain from the point of view of the Merchant Seamen's Compensation Board. The drain is only in proportion to the people who are getting paid. How many widows were there? I think you said that there were 28 widows, and 35 children.

Mr. Currie: But this is only the result of fatal accidents. We have a fair number—I cannot give you the figure but I will provide it if you wish—of those receiving temporary disability payments pending their return to work, and those in receipt of permanent disability payments.

Senator Carter: We want all the statistics. We want to know what it is you pay out.

Mr. Currie: We do not pay out anything. I would like to clarify that.

Senator Carter: But it is paid out by the fund.

Mr. Currie: There is no fund.

Senator Carter: Who pays it?

Mr. Currie: The employer pays it through the insurance which this law requires him to carry to cover these contingencies, but there is no fund in the sense that there is a provincial workmen's compensation fund on which to draw for these benefits.

Senator Carter: But the total fund itself cannot be all that big.

Senator Croll: There is no fund.

Senator Carter: I am referring to the total cost.

Senator Croll: The workmen's compensation acts in the Maritimes cover steel workers, but you say that the risk is so great in respect of the seamen that they cannot afford the premiums. Is that what you are saying?

Mr. Currie: I am saying that from my reading of the history of this problem—it has been going on for decades, and it is still not resolved—it appears that the workmen's compensation boards in these provinces do not feel they have sufficient financial resources to assume this additional liability for accidents involving seamen and fishermen. But, this is not the only industry that is excluded from these acts, you know. There are others. For example, civil aviation is not covered in the Atlantic provinces under the workmen's compensation acts. People who work in banks are not covered. Other persons who work in a variety of industries, for one reason or another, are not covered. This is at the discretion of the provincial legislature or the board. The act itself usually says who is to be covered and who is not to be covered; some of this is done by regulation.

Senator Carter: I do not follow the witness, Mr. Chairman. He says the provinces cannot afford to take on this extra liability, but the federal Government is not taking on the liability either. The witness has just said that there is not a federal fund.

The Acting Chairman: But is not the federal Government providing the legislation to protect those same people?

Senator Carter: Is there anything to prevent a provincial government from doing what the federal Government is doing?

Mr. Currie: I am not aware of anything.

Senator Carter: You said that the reason why they did not do it was because they could not afford it, but there is no liability on the federal Government, so why should there be liability on the provincial government.

Mr. Currie: The federal Government does not operate a workmen's compensation scheme at all...

Senator Carter: That is not my question.

Mr. Currie: ...but each province does. Again, it is hardly appropriate for me to attempt to interpret what a provincial legislature ought to do. I can only give my impression as to why this situation has arisen. It would be difficult for a province to set up a workmen's compensation system only for merchant seamen. I would think that if they were to cover this category of workers, as, indeed, other provinces have covered it, they would integrate it with their present workmen's compensation system. However, for some reason or other they have not seen fit to do this.

Senator Carter: But they have done it for fishermen. I think that Newfoundland has...

Mr. Currie: Yes, and Nova Scotia too, up to a certain limit.

Senator Carter: Yes, and Newfoundland has compulsory insurance for fishermen up to a certain limit.

Mr. Currie: I think it is optional. They may apply for coverage, and some have, but the great majority have not applied for participation in this scheme. Farmers are not covered by workmen's compensation schemes on a mandatory basis, except in Ontario. In other provinces they have an optional scheme, and it is the same for fishermen. So, this is really a decision to be made by the provinces, and the fact that our law is here does not prevent them from doing this if they so choose.

Senator Carter: But the money you pay out to these widows and orphans comes from the employer of the person concerned who, in turn, more likely than not covers the risk by insurance.

Mr. Currie: They are obliged to do that by this law. I presume a province could pass similar legislation, but none has chosen to do so.

Senator Smith: I think the only province that has chosen to do so, as I understand it, is British Columbia.

Mr. Currie: They cover merchant seamen anyway, and so do Ontario, Quebec, and Manitoba.

Senator Smith: I am talking of the coastal seamen.

Senator Inman: What about the draggers that stay out to sea for days? Are the members of the crews of draggers covered as seamen or as fishermen?

Mr. Currie: They are not covered by this statute at all. Most fishermen—certainly those in the Atlantic provinces—have only this protection if they apply for it and pay the necessary premiums into the provincial workmen's compensation fund.

Senator Inman: And the people who operate the draggers would not be classed as seamen?

Mr. Currie: No, they are not classed as seamen for the purposes of our legislation. I think you will find that in most of the Atlantic provinces they do not have this protection.

Senator Croll: Yours is an administrative job. You are concerned with seeing that the thing is done. There is no expense involved. You are concerned with administration, with the assistance of the workmen's compensation boards in those various provinces.

Mr. Currie: The administrative expense involved for us is minimal.

Senator Croll: But there are no moneys exchanged.

Mr. Currie: We do not disburse any moneys.

Senator Croll: So for all purposes you are there to see that they are protected and the same thing could have been done without the cost of a nickel by the compensation boards in the provinces?

Mr. Currie: Except that they then would become responsible for the financial outlays, unless they were to do it in the same way as we. However, the boards have not chosen to do this and this legislation is there to fill these gaps.

Just to go back in history, it first came into operation during World War II because it was found that the many hundreds of merchant seamen, many more than at present, were not enjoying the benefits of workmen's compensation. Under the War Measures Act of those years regulations were passed to put the scheme into effect. In 1946 it was put into permanent form by act of Parliament, this latest amendment being the fifth or sixth to the original act.

Senator Carter: Does the orphan or the widow apply to you, or must application be made through the Workmen's Compensation Board?

Mr. Currie: No, all applications for benefits under the law must be filed with the Merchant Seamen's Compensation Board in Ottawa. There are certain procedures to be followed by the employer and other requirements to be met by the claimant, whether the seaman or his dependants.

Senator Carter: With regard to the rates, a widow, for example, alone in 1957 received \$75, which was not changed in 1965. It remained at \$75 from 1957 right up until 1970, which is 13 years. Now it has been increased to only \$100 and this poor widow is shortchanged. Is there any explanation for that?

Mr. Currie: My recollection is that we changed these rates in 1965.

Senator Carter: No; the widow received \$75 in 1957. It was not changed in 1965.

Mr. Currie: I am sorry, I do not have the chronological development of these rates. That might well be. If the rates were not changed it is because they were those prevailing for similar categories under the provincial statutes.

It was the original concept, and we have maintained it pretty consistently since, that these rates would be comparable to those prevailing in the Maritime provinces for similar categories of benefits. If that rate was maintained it was because it was then current in Newfoundland, Prince Edward Island and Nova Scotia. Their rates have now been increased to \$100 and we are making the same revision.

Senator Carter: You just follow what they do?

Mr. Currie: Yes.

Senator Carter: Does the federal Government have no responsibility at all to the widows to see that they receive fair treatment? Why should they be treated worse in 1970 than in 1957?

Mr. Currie: Worse in 1970 than in 1957?

Senator Carter: Yes, they are getting less; less purchasing power.

Senator Smith: The Economic Council of Canada and Dr. Young may have an answer.

Mr. Currie: This, of course, would give rise to a very extended discussion with respect to the depreciation of our dollar.

The Acting Chairman: I understand, Mr. Currie, that you just said those rates are based on provincial rates and you made a change because the provinces have seen fit to do so?

Mr. Currie: There are two provinces in Canada which have tied their pensions to widows under the workmen's compensation laws to an escalation clause. They are British Columbia and Quebec. As a consequence of this, if the cost of living rises by a certain percentage, the Workmen's Compensation Board is able to make adjustments in these pensions without reference to the provincial legislature. In the other eight provinces there is no such provision.

I think we have come a little way towards this, not automatic but to facilitate more frequent adjustment, in our proposal in this bill to enable the Governor in Coun-

cil to make these adjustments from time to time without requiring a separate act of Parliament in each case.

I do not think this answers your question as to the adequacy of these rates, senator, but having the rates in accord with the current provincial scales is really a matter of policy.

Senator Macdonald: I have a question related to clause 3 on page 3:

31A. Where it is found by the Board that a widow to whom compensation has been awarded is living with any man in the relation of man and wife without being married to him, the compensation to such widow may be discontinued or suspended or such compensation may be diverted in whole or in part to or for the benefit of any other dependant or dependants of the deceased seaman.

Would that result in a compensation rate lower than the minimum required to live?

Mr. Currie: I have no way of knowing about these situations. I must say that in providing benefits according to this rate structure it is fair to say that we are doing what is being done for all other categories of workers in similar areas of Canada.

I am not arguing that these benefits are anything more than perhaps of sustenance standard. However, they are what are paid, with perhaps minor variations, in the case of a worker injured or deceased as a result of a work accident in any other industry in these areas.

Senator Carter: Dominion Bureau of Statistics figures indicate that if a widow received \$100 in 1957 she would need \$143 today to maintain the same purchasing power. A widow receiving \$75 in 1957, in order to have exactly the same purchasing power, would need \$107 today. Therefore that widow is \$7 worse off per month now, after 13 years have passed and expectations are much greater, since the GNP has risen and our whole standard of living is higher. These poor devils are being gypped out of \$7 a month and are now worse off than they were in 1957.

Who is responsible? Does the federal Government have no responsibility in this connection, or can they say "Push it on the provinces or the Workmen's Compensation Boards in the provinces"?

Mr. Currie: My only response to that, Mr. Chairman, at this time would be to say that in carrying out this principle of comparability, which has been pretty well a basic consideration since this act was first established, is not a bad rule of thumb or yardstick.

I have no doubt that there are continuing pressures on provincial legislatures to revise the benefits upwards, which is done from time to time. It might be rather difficult for the provincial boards if this were to establish rates beyond their ability to pay.

Senator Carter: I would agree with that up to a point. I do not think we should distort the provincial rates. At the same time we must draw a balance between provincial rates on the one hand and simple justice on the other. Someone has to assume responsibility somewhere

for this balance. What I am trying to pinpoint is: where does the responsibility rest? Does it rest with the federal Government, the provincial government or the provincial board? We are reasonable people, but it certainly does not seem reasonable that, because a provincial government may do an injustice to a widow or to an orphan, the federal Government has to go along with it. I cannot accept that argument.

Senator Croll: Let us take the case of a widow of 66 years of age. All she has is \$75. She is eligible to receive old age security and a supplement. Is the \$75 income or is it a pension?

Mr. Currie: It is a pension, and it is non-taxable income.

Senator Smith: It is not taxable?

Mr. Currie: No. All incomes under workmen's compensation legislation are non-taxable.

Senator Smith: I do not think that answers Senator Croll's question. His question was whether or not this was income to be considered when that person is applying for the old age security supplement.

Senator Croll: He says not.

Mr. Currie: I am sorry, I could not answer that.

Senator Smith: No, and I did not think you should.

Mr. Currie: I was saying that it was not taxable.

Senator Inman: Are the majority of these recipients young women with children?

Mr. Currie: From a quick glance at this list it appears to me that there are more widows who do not have dependant children than there are those who do, which suggests to me that they are in an older age group. The majority of widows are those who do not have any children.

Senator Inman: That is remarkable to me. I remember a disaster we had in our province. I have forgotten the number of seamen who had been drowned, it was 10 or 11. I know for the families left there was a public subscription to help them.

Mr. Currie: It often happens that a seaman who loses his life is an unmarried man, then there are usually no pensions payable to anyone.

Senator Inman: In this case a number of children were left fatherless.

Senator Macdonald: Are the seamen on the CNR ferry between Nova Scotia and Newfoundland covered by this bill or some other act?

Mr. Currie: They are covered by this act.

Senator Macdonald: Is that everybody who works on the boats?

Mr. Currie: Yes. We also cover those on the ferry running between St. John's and Digby across the Bay Fundy, so they are covered one way or the other.

The Acting Chairman: Could you tell us if the Atlantic provinces have similar rates? Is there any difference between the rates in the Atlantic provinces?

Mr. Currie: I will give you a rundown on those, Mr. Chairman. The monthly pension for a widow only in Newfoundland is \$100, in New Brunswick \$100, in Nova Scotia \$100, in Prince Edward Island \$75. Newfoundland, New Brunswick and Nova Scotia introduced the \$100 rate in 1970, so we are hoping to introduce ours at approximately the same time.

The Acting Chairman: Is it not also a fact that under this bill you will not have to wait for new legislation; the minister will have a discretion to increase the rates as the provinces increase theirs?

Mr. Currie: The minister would recommend this to the Governor in Council, yes, so it would not require legislation.

Senator Croll: That is the purpose of this bill.

Mr. Currie: That is the purpose of an amendment in this bill, yes.

Senator Croll: For the purpose of the record, will you ascertain the answer to my question whether that \$75 is income under old age security for supplement purposes?

Mr. Currie: Yes, I will. You mean is a widow's pension deemed to be income?

Senator Croll: Yes, a widow's pension.

Mr. Currie: I have the other rates. A monthly pension to a child in New Brunswick is \$25, in Nova Scotia \$38, in Prince Edward Island \$25. Again these rates as of 1970. The pensions to orphans in those three provinces, again as of 1970, are \$50, \$45 and \$35 per month—in New Brunswick, Nova Scotia and P.E.I.

Senator Carter: New Brunswick has a \$50 rate for orphans?

Mr. Currie: Yes, in New Brunswick.

Senator Carter: And \$45 in Nova Scotia?

Mr. Currie: That is correct, and \$35 in P.E.I.

Senator Carter: What about Newfoundland?

Mr. Currie: There it is \$45.

Senator Smith: I wonder if I could go back to Senator Macdonald's question on whether or not the Canadian National Steamship people are covered. I have before me a list—I do not know how up to date it is—and I see the Canada Railway News Company listed as one of the companies operating under the Merchant Seamen's Compensation Act. I also see the Canadian Pacific Railway Company. I do not see the Canadian National.

Mr. Currie: I did not want to get into an elaborate, complicated explanation. The Canadian National, as you know, in that part of the world operates railways formerly called Canadian Government Railways, which comprise part of the Canadian National system. You will

notice that in the Government Employees Compensation Act a section dealing with Canadian Government railways, which really come under the federal Government. Consequently the situation regarding the CNR is not all that clear. As a matter of practice, however, CNR employees come directly under the provincial Workmen's Compensation Boards, although they do not pay any assessments; they are self-insured. In effect, therefore, the steamships they operate—the car ferries to the Island and back—may be, although I stand to be corrected, within the general system operated by the CNR. I am certain that the employees on these ships of both the CNR and the CPR are in fact covered.

Senator Smith: They are covered one way or the other?

Mr. Currie: They are covered one way or the other. There is no doubt about that.

Senator Smith: I was sure about that; they are very strongly unionized.

Mr. Currie: Of course. The people who run the restaurants aboard these ferries are covered too.

Senator Carter: I have lots more questions. I would like to follow up Senator Croll's question. Let us take the case where there are orphans; both parents have gone. A foster mother either takes the orphans into her home or takes her family into the orphans' home. If she goes into the orphans' home she will now get \$100 a month plus \$35 for each child. If there are three orphans she will go into the home and get \$100, plus \$35 for each orphan, a total of \$205. Will this affect her income for mother's allowances under the provincial legislation?

Mr. Currie: I am sorry, I could not answer that; I do not know.

The Acting Chairman: This would be a provincial regulation would it not?

Senator Carter: I think it should be on the record there because should the foster mother be living on welfare, there would be some sort of social assistance for herself and her three children. Let us say that the foster mother is not earning and it is a welfare case. She moves into the orphans' home or takes the orphans into hers and she qualifies one way or the other under this act for the widow's pension and the children's allowances, which is an increase in the family income. Can you find out the answer for us and let us know how that would affect her under the provincial allowance? Would that reduce her allowance?

Mr. Currie: I will endeavour to find out for you. These rules may vary among the provinces. Would you want a particular province?

Senator Carter: I would like it for each province if available, but if you cannot obtain it you can't. The more information you can get the better.

The Acting Chairman: I understand you would want this information with the other questions which you have asked Mr. Currie to supply.

Senator Carter: I know this is going to take a little time, but I hope we will get it and hold up the publishing of the report until this information is received.

Mr. Currie: May I have some direction from the committee. If I can keep in touch with the chairman and give two or three illustrations which may be indicative of how this is done so as to give a sampling rather than going through all the 10 provinces, would this be satisfactory?

Senator Carter: Yes, that would be fine. Section 30 of the act has to do with the death of a person and the compensation for transportation and transfer of the body from the place of death to the place of internment. Why has no provision been made for an increase? Why has there not been an increase since 1965, because costs of transportation and everything else has increased? There is no increase in that. Why has it been omitted?

Mr. Currie: It is still the same amount as in Newfoundland and Prince Edward Island. I see that New Brunswick has a maximum of \$500 and Nova Scotia an amount of \$400 for funeral expenses.

Senator Carter: You have not followed the lead of the provinces in using the maximum there, because you have left it at...

E. Russell Hopkins, Law Clerk and Parliamentary Counsel: It is \$300 now, as of 1965.

Mr. Currie: We are changing this from \$300 to \$400 in our proposed bill.

Senator Carter: That is for burial only; I am talking about subsection (b) which is for the transportation of the body and not the burial expenses.

Mr. Currie: One hundred and twenty-five dollars.

Senator Carter: Yes, but that has not changed since 1957.

Mr. Currie: I do not seem to have a table on that.

The Acting Chairman: Maybe Mr. Currie could supply us with this information.

Senator Carter: The freight rates have certainly gone up.

The Law Clerk: Presumably the provincial rates have not gone up.

Senator Carter: Do the provinces cover this?

Mr. Currie: Mr. Chairman, I have a table here which was compiled in 1969. There may be some changes since then, but I am not aware of it.

Senator Carter: I am not talking about the burial expenses, but freight rates for the body.

Mr. Currie: In Newfoundland it is \$125 and in P.E.I. and Nova Scotia it is \$100 and in New Brunswick it is \$125.

The Law Clerk: They have not risen.

Senator Carter: I would like to know how long it has been \$125 in these provinces. Perhaps they get the benefit of Maritime freight rates.

Mr. Currie: It may interest you to know that in Alberta and British Columbia the maximum rate is only \$100. These are maximum amounts, therefore presumably they must, in most cases, meet the ordinary expenses.

Senator Carter: I will not labour that point. It seems strange that if \$125 was the rate in 1957 that we have not seen fit to change it since.

In section 38 of the original act we talk about average earnings as follows:

Average earnings shall be computed in such a manner as is best calculated...

et cetera. How are the average earnings calculated? It does not say here. It says, "in such a manner".

Mr. Currie: Whichever is most advantageous to the seaman. They might go up to an average earnings over a period of a year preceding the accident or preceding a month or six weeks. The board establishes what would seem to be a fair base for the seaman's earnings.

Senator Carter: You set a limit on that of \$5,000.

Mr. Currie: There is a limit in every province.

The Acting Chairman: Is it not \$6,000?

Mr. Currie: It is now \$5,000 but it is going to be \$6,000.

Senator Carter: It is only going to be \$6,000? There again, if you take into consideration the equivalent dollars, it should be \$6,800, because it takes 6,800 dollars 1970 to be equivalent to \$5,000 1957 dollars. You are gypping the person again. The pattern is emerging now that the federal Government takes no legal responsibility at all and that they just slap it off onto the provinces. I think it should be the other way around and that the federal Government should be giving the lead in these things.

Mr. Currie: May I comment, Mr. Chairman, that this is again exactly the prevailing rate as of the year 1970 for the four Atlantic Provinces, \$6,000.

Senator Carter: You said, if I understood you correctly, that when you compute the average earnings below this level that it is done in whichever way will be to the best advantage of the seaman. It might be on a weekly basis.

Mr. Currie: It might be over a few weeks, but if it were more advantageous to extend it over three or six months that preceded the incident then this would be done. We get all the payroll records from the employer.

Senator Carter: This is done by the board in Ottawa?

Mr. Currie: This is done by us.

Senator Carter: One of the things that intrigued me is the conditions under which a person qualifies for this. That is in section 30, subsection (2). I will put it on the record.

Where the seaman leaves no widow—

This is a case where both parents are dead, and someone has to look after children, orphans without parents—

Where the seaman leaves no widow or the widow subsequently dies and it seems desirable to continue the existing household, and an aunt, sister or other suitable person acts as foster mother in keeping up such household—

I am underlining the word "household"—

—and maintaining and taking care of the children entitled to compensation, in a manner that the board deems satisfactory, such foster mother while so doing is entitled to receive the same monthly benefits of compensation for herself and the children as if she were the widow of the deceased and in such case the children's part of such payment shall be in lieu of the monthly payment which they would otherwise have been entitled to receive.

The word "household" is not defined or spelled out at all in the act. How is the term "household" determined?

Mr. Currie: The term "household" as used in this section of the statute is interpreted not in the narrow sense of a dwelling or domicile or particular building. Rather, it refers to the people who dwell together under a roof and compose the family. It is the sense of a unit of people, a group of people, who compose a family, where it is on-going, its maintenance, and so on, where this is happening. It is not necessarily a particular address on a specific street.

The Chairman: So it is not a building, it is not a home. It is a family.

Senator Carter: Who makes this interpretation? Is this an interpretation that is followed by the workmen's compensation acts in the provinces or is this an interpretation set by the Merchant Seamen's Compensation Board?

Mr. Currie: I am sure, Mr. Chairman, that it will be evident to everyone that cases of this kind arise many times over the years, so that all the workmen's compensation boards and the merchant seamen's compensation board have had experience in dealing with this interpretation. The interpretation I have just given is one which our board uses. I would say that in the majority of the provincial workmen's compensation boards they hold similar views, that this is a question where the board, on the information given to it as to the exact situation of these dependent children, decides what constitutes the household, and it does not have to be a physical entity, it may move.

Mr. Hopkins: Is the expression "household" defined?

Senator Croll: Would the words "existing household" be similarly used in the compensation acts in the provinces?

Mr. Currie: Exactly the same wording is found in several statutes. Others have minor variations. We have looked into this carefully and it is fair to say that all compensation acts have a clause substantially the same as this.

Senator Carter: What would happen, Mr. Chairman, if the workmen's compensation board interpreted it in a different way?

Mr. Currie: I suspect it would be up to the claimant or recipient, or whoever the beneficiary may be, to challenge that decision. This is quite in order.

Senator Carter: Very often the person affected is a poor little orphan, who may be living in some remote outpost and does not know, nor do the people around him know, under what terms this award has been made. They are not familiar with the act or the terms used. All they know is that they apply for something and get something. They do not even know whether they get as much as they are entitled to.

Mr. Currie: I think we would agree that most compensation boards—and I think it is fair comment regarding our own board—that the members of the board take an intelligent concern for these situations, especially. We are not easily misled. We require evidence as to the condition under which these children are left, who is going to look after them, if they are competent to do so, and so on. In the light of the information coming before the board, the decision is made as to what might be paid and to whom. It is true that there may be errors in these decisions, but if a youngster is left without a parent there is usually some other adult in the neighbourhood. We have even had such dependents made wards of provincial courts, who then intercede on their behalf and so on. I do not think we have had a case where a youngster was left without some adult to advise him or to take an interest in his affairs.

Senator Carter: I am not raising that question. I am raising a different question, because I happen to know in my experience of an actual case where the child was taken care of. Both parents died, and the child was taken care of by an elder sister, his nearest relative. But she took him into her own home, because she was married and had a home of her own. And the sister was refused the widow's payment under this interpretation put on the word "household".

Mr. Currie: I think, understandably so, if I may say so.

Senator Carter: Why? If she moved her family into the children's home where the parents had lived, she would have got the widow's extra payment...

Mr. Currie: That is possible.

Senator Carter: But because she took the child into her own home, she is deprived of it. Why?

Mr. Currie: There are two different situations existing here, as I interpret this provision. First of all, this was an orphan. Had that older sister continued the existing household...

Senator Carter: Was not she continuing the existing household? You said "household" does not mean an address on a street.

Mr. Currie: That is quite right. But there are two other conditions that must be met. Any claimant for benefits under this compensation legislation, or indeed any compensation legislation, must have an entitlement on the basis of dependency. That is a very important principle. It must be established that there was some prior dependency on the deceased, in this case a seaman, as indeed in any workmen's compensation law.

So this older sister of the orphan to whom you refer, you say she is a married woman, she had a house in some place else, presumably living with her family.

Senator Carter: Yes.

Mr. Currie: There was no prior dependency of that woman upon the deceased seaman's earnings. I can only assume this because she is a married woman living some place else and I can only assume that she is supported by her husband. So, on the death of the seaman, and of his widow who may have succeeded him, the only person who had been dependent on the earnings of that seaman is this orphan child.

Senator Carter: Yes.

Mr. Currie: So that orphan child becomes automatically entitled to what is provided in the statute for an orphan. There is no question about this. He would be paid and was paid. When this orphan went to live with a sister, the sister of the orphan began to receive the money, which was right and proper. Because this sister took the orphan into her home, which she had already established and which was being maintained by her husband, perhaps, or it may be that she and her husband are doing so jointly, this did not create an additional state of dependency or expense on that household.

Senator Carter: Oh, oh, oh, ...

Mr. Currie: If I may just conclude with one sentence. This was not as is provided in the law, and therefore there was no allowance paid to that older sister as a foster mother. That is why.

Senator Carter: You spoke about "dependency". I lost you. I could not understand "dependency".

Mr. Currie: That is the whole principle of the legislation.

Senator Carter: If you took another woman, or if that sister had moved down, with her family, into that old house belonging to the parents, she would have qualified under the act.

Mr. Currie: I would expect so.

Senator Carter: It is exactly the same situation, because they are all living under the same roof.

Mr. Currie: As I said, I would expect so. The board would have to determine that this was in the best interests of the youth, the young boy. It would not automatically follow because the board was concerned with the welfare of the remaining dependants.

Senator Carter: I just do not follow you.

The Acting Chairman: Would there be a case also, Mr. Currie, if there were two or three sisters and everybody was fighting to get the orphans in order to get the pension.

Senator Carter: That might be one case in ten thousand. I am fed up with the exceptions being dragged in that serve only to becloud a principle.

Mr. Currie: There is more than just one principle involved here.

Senator Carter: I want to establish that principle, because it does not make sense to me. It does not make sense to me that if that sister had moved her whole family down into the old house where the child lived she would have qualified. She did not do so and that was the reason given for depriving her of it. Moreover, the child himself was deprived of his full allowance, too.

Mr. Currie: I beg your pardon.

Senator Carter: The child himself did not get the maximum allowance.

Mr. Currie: That is another question.

Senator Carter: I am not mixing the two questions together anyway, because I want to pinpoint this so-called principle. You said a household does not have to be a house on a street. It does not have to be a street number.

Mr. Currie: Right.

Senator Carter: And you say that the criterion is maintaining the existing household. Well what is the existing household?

Senator Croll: He did not say that. He said dependency.

Senator Carter: I lost him on dependency.

Senator Croll: Dependency is the word, and the point that you are making, senator, is what difference is there so far as dependency is concerned whether she lives at 241 Smith Street or 752 Smith Street. That is the point we are making. I do not follow that, Mr. Currie.

Mr. Currie: I will try to elaborate if I may. All workmen's compensation legislation is predicated upon some state of dependency in order for a beneficiary to qualify for some allowance. This particular section which talks about an existing household means that the family unit which in this particular case was one remaining boy. There could have been two or three. The concept behind this is that if you maintain this family group as a unit—and that may be for ever, because it is important that those people remain together, since they have been living together all these years anyway, and under normal circumstances that is what they would prefer to do—then the law says the existing household. Now, if these children are removed from that place, for whatever reason it may be, and put into some other place as an on-going, continuing, household unit, and are in the charge of somebody else who has the maintenance of that place—

because it is not just the existing household but is also the maintenance and care of the children that the law says—then the law recognizes the additional expense of that foster mother *in loco parentis* to those orphans and this presumes dependency.

In the case before us, when the youth moved into his sister's household the board did not believe that there had been a state of dependency upon this seaman existing prior to the accident or subsequent to his death. The only one who could legitimately claim the benefit was the orphan, and it was paid to him. Had that sister not been maintaining another household, presumably, she would have received it. Suppose she had been an unmarried sister or a maiden aunt, she would then have received the allowance without any question. But here we are talking about maintaining another household. There are two households in this case, let us say.

Senator Carter: I disagree with you. I think the household disappeared completely when both parents died, because the household is owned by somebody. It is owned by the head of the family.

Mr. Currie: Not at all, in my opinion. The household is the family unit, and that comprises this group of people who are living together.

Senator Carter: Give me any definition from any authority that will define household in that way.

The Acting Chairman: I think the witness has a right to have his own interpretation just as you also have a right to your own interpretation, Senator Carter.

Senator Carter: No, Mr. Chairman. That is not true. In law when a word is not spelled out, then you take the ordinary meaning of the word that is set forth in the dictionary. That is my understanding. Mr. Hopkins can put us right on that.

Mr. Currie: Well, I have some dictionary definitions of the word here, if you wish. They may be useful.

The *Oxford Dictionary* defines household as 1) the maintaining of a house or family; 2) the contents of a house collectively. The *American Dictionary* defines the word household as "those who dwell under the same roof and compose a family". Those are two common definitions in the dictionaries. And that is the ordinary interpretation we placed on it.

Senator Inman: What if that child had been put in a foster home or an orphanage?

Mr. Currie: He would be in receipt of the allowance payable to an orphan, but the institution as such would not receive the allowance paid to a foster mother or foster father.

Senator Carter: Who determines the policy in selecting a foster parent?

Mr. Currie: The board does not intervene in these situations unless any information comes to the attention of the board to suggest that it may not be in the interest of the orphan. So it is done locally, I can only conclude.

Senator Carter: Are you saying that the board follows the policy of the compensation board in question?

Mr. Currie: We would, and we also cause local investigations to be made of the circumstances. And then we would want to satisfy ourselves that these people have means and ways and are competent to look after the orphan.

Senator Carter: Have you any policy for selecting foster parents where you assess priority with respect to the nearest relative, for example? For example, would a sister be given priority over a more distant relative?

Mr. Currie: No, sir.

Senator Carter: You have no policy like that?

Mr. Currie: No, there are no rules laid down for first, second, third or other choice for who might be a foster parent.

Senator Carter: You said just now that there was no expense if both parents died and the child was taken into the family of the sister. Certainly that is maintaining the family. That is the nearest relative, the nearest blood relative. But might it not be possible that this sister would have to get additional space to accommodate the child as it grows up? It might be all right when he is small, but what happens when he grows up?

Mr. Currie: That is possible.

Senator Carter: By and by the situation might become

such that the sister would have to provide additional space. For example, the sister might have only girl children and if the orphan was a boy, she would have to get additional space. But there is no recognition of that. You said there was no additional expense.

Mr. Currie: Perhaps I replied too easily to that, Mr. Chairman. What I meant to say was that in the case that you cited, since the older sister already does have a household, there really was no particular expense to continue it. But if she had had to add a room or to make some other internal facilities available in the house to accommodate the young boy, that presumably would be some additional expense. That is one of the reasons why an orphan gets a larger allowance per month than another child. It is the recognition that there are some additional expenses involved.

Senator Carter: You spoke about the definitions just now. You put one or two definitions on record. I wish to give you one from the *Oxford International Dictionary*. "Household is the maintaining of the house or family." That is one. "The inmates of a house collectively." That is the second definition. "A domestic establishment." That is the third definition.

Mr. Currie: I think all of those may be used rather interchangeably. I gave you what I believe to be the practice which the Merchant Seamen Compensation Board follows in trying to interpret this expression.

Senator Carter: The use of the word "household" in the English language connotes ownership. I refer you to the Bible, to I Corinthians, 1,16 where St. Paul says:

16 And I baptized also the household of Stephanas:..

That is the household of Stephanas, and if Stephanas died, then it would be his wife's household, and if she died, it is nobody's household because the two owners are gone.

Mr. Currie: Well, senator, when we surveyed this question and consulted with each of the ten compensation boards, we received a fair amount of information on their experience and how they cope with the situation. It is a very serious matter, and from all this correspondence we discovered that they were approaching this problem in much the same way as we were, not regarding a household as the physical thing or a building or a domicile, but as a family group. And this is the way, to the best of my knowledge, it is applied.

Senator Carter: But this act permits this anomaly where you say that if a child or a couple of children are left orphans, unless somebody moves into their place they are not considered as a household, and the person who looks after them and performs all the services of the foster mother and takes on the responsibility is not entitled to anything at all for that saving what little allowance is given to the child which is barely enough to keep him at a level of existence.

Senator Croll: May I suggest that this discussion which is very pertinent and very important be brought to the attention of the compensation boards in the provinces so that the views on this particular matter are known, and that the matter may be discussed in the board of which the witness is a member. There is an anomaly here and I think it ought really to be looked into and discussed, because we do not get a chance at this bill very often.

Mr. Currie: Certainly the Board is as concerned as any one else that justice should be done to these people. We are very conscious of our responsibility and obviously it is possible in many situations that some misjudgment may arise. But when these matters are brought to the Board's attention or we are dealing with any new claims, we attempt to determine which is the best thing for the remaining children.

Senator Carter: I should like to suggest, and here I am not making an amendment, that if you look at the Pension Act, that is the Veterans Pension Act, they use the words "domestic establishment", and I think that word "domestic establishment" is a much better term to use in this particular connotation than "household", which even though it does appear in all the provincial legislation is not, I think, something we need to bother about. If you look at section 26(10a) you will see that it says:

Where any pension has been awarded to a minor child or minor children of a member of the forces who, at the time of his death, was a widower and who, during his lifetime, maintained a domestic establishment..

APPENDIX

MERCHANT SEAMEN COMPENSATION BOARD
COMMISSION D'INDEMNISATION DES MARINS
MARCHANDS

Ottawa 4, Ontario,
December 11, 1970.

The Honourable H. J. Robichaud,
Acting Chairman,
Health, Welfare and Science Committee,
The Senate
Ottawa, Ontario.

Dear Senator Robichaud:

When Bill C-188, an Act to amend the Merchant Seamen Compensation Act was being considered by the Health, Welfare and Science Committee of the Senate yesterday, I undertook to supply some additional information in response to certain questions.

Accordingly, I am enclosing a table showing the number of awards under payment as of October 1970 and their approximate monthly cost, by the main categories of benefits or beneficiaries.

As regards the question of such payments to widows and/or other dependants being taken into account in determining their eligibility for social welfare allowances, I have been informed that they are regarded as unearned income and generally are counted in deciding to what extent the recipient may be qualified for other forms of welfare. These awards apparently comprise part of the "needs test" to which such cases are subject. In one province, I am told, no other allowances of this sort are payable if workmen's compensation is being received unless a special case can be made for it on application to the appropriate provincial authority.

With reference to Old Age Security (universal at age 65 at \$79.58) this is unaffected by any pension being paid under workmen's compensation law.

Similarly entitlement to payment under the Guaranteed Income Supplement plan is determined without reference to any workmen's compensation pension being paid. This is because "income" for the purpose of this plan is computed in accordance with the Income Tax Act and under that statute workmen's compensation payments are not deemed to be "income".

I trust this will satisfy the enquiries made with respect to these points. If any other information is required a request need only be made to the Secretary of the Board and it will be dealt with promptly.

I am grateful to the Committee for their evident interest in this subject and for the courtesies extended to me yesterday.

Your sincerely,

J. H. Currie,
Member.

MERCHANT SEAMEN COMPENSATION ACT
SUMMARY OF CURRENT AWARDS
AS OF OCTOBER 1970

I. Disability Allowances	Cases	Approximate Monthly Cost	
		\$	
(a) Temporary Total.....	7	1,963.00	
(b) Permanent Partial.....	26	1,070.00	
(c) Permanent Total.....	1	312.00	
TOTAL.....		3,345.00	

II Dependants' Allowances	Cases	Number of Children	Approximate Monthly Cost	
			\$	
(a) Widows only.....	15	—	1,125.00	
(b) Widows with children..	8	19	1,075.00	
(c) Widows remarried— dependent children....	2	3	75.00	
(d) Orphans.....	—	3	105.00	
(e) Foster parent.....	1	1	100.00	
(f) Other dependants.....	10	—	362.00	
TOTAL.....			2,842.00	

MSC Board,
December 1970.



THIRD SESSION—TWENTY-EIGHTH PARLIAMENT

1970

THE SENATE OF CANADA
PROCEEDINGS OF THE
STANDING SENATE COMMITTEE ON
**HEALTH, WELFARE
AND SCIENCE**

The Honourable MAURICE LAMONTAGNE, P.C., Chairman

No. 2

FRIDAY, DECEMBER 18, 1970

Complete Proceedings on Bill C-202,
intituled:

"An Act to amend the Old Age Security Act"

REPORT OF THE COMMITTEE

(For list of Witnesses: See Minutes of Proceedings)

THE SENATE COMMITTEE ON HEALTH,
WELFARE AND SCIENCE

Chairman: The Honourable Maurice Lamontagne

The Honourable Senators:

Bélisle	Inman
Blois	Kinnear
Bourget	Lamontagne
Cameron	Macdonald (<i>Cape Breton</i>)
Carter	McGrand
Connolly (<i>Halifax North</i>)	Michaud
Croll	Phillips (<i>Prince</i>)
Denis	Quart
Fergusson	Robichaud
Fournier (<i>de Lanaudière</i>)	Roebuck
Fournier (<i>Madawaska- Restigouche</i>)	Smith
Gladstone	Sullivan
Hays	Thompson
Hastings	Yuzyk—(28)

Ex officio Members: Flynn and Martin

(Quorum 7)

Orders of Reference

Extract from the Minutes of the Proceedings of the Senate, Friday, December 18, 1970:

"A Message was brought from the House of Commons by their Clerk with a Bill C-202, intituled: "An Act to amend the Old Age Security Act", to which they desire the concurrence of the Senate.

The Bill was read the first time.

With leave of the Senate,

The Honourable Senator Robichaud, P.C., moved, seconded by the Honourable Senator Fournier (*de Lanaudière*), that the Bill be read the second time now.

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Robichaud, P.C., moved, seconded by the Honourable Senator Denis, P.C., that the Bill be referred to the Standing Senate Committee on Health, Welfare and Science.

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative."

Robert Fortier
Clerk of the Senate

Minutes of Proceedings

Friday, December 18, 1970.

(2)

Pursuant to adjournment and notice the Standing Senate Committee on Health, Welfare and Science met this day at 2:10 p.m.

Present: The Honourable Senators Bourget, Cameron, Carter, Denis, Fergusson, Flynn, Fournier (*de Lanau-diére*), Inman, Kinnear, Lamontagne, Martin, McGrand, Michaud, Quart, Robichaud—(15).

Present, but not of the Committee: The Honourable Senators Aird, Benidickson, Forsey, McDonald (*Moosomin*)—(4).

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

On motion of the Honourable Senator Robichaud it was *Resolved* to print 800 copies in English and 300 copies in French of the Proceedings of the Committee on Bill C-202.

The Committee proceeded to the consideration of Bill C-202, "An Act to amend the Old Age Security Act".

The following witness was heard in explanation of the Bill:

Department of National Health and Welfare:

The Honourable John Monroe, P.C.,
Minister.

On motion duly put, it was *Resolved* to report the said Bill without amendment.

At 3:13 p.m. the Committee adjourned to the call of the Chair.

ATTEST:

Patrick J. Savoie,
Clerk of the Committee.

Report of the Committee

Friday, December 18, 1970.

The Standing Senate Committee on Health, Welfare and Science to which was referred Bill C-202, intituled: "An Act to amend the Old Age Security Act", has in obedience to the order of reference of December 18, 1970, examined the said Bill and now reports the same without amendment.

Respectfully submitted.

Senator Maurice Lamontagne,
Chairman.

Standing Senate Committee on Health, Welfare and Science

Evidence

Ottawa, Friday, December 18, 1970

The Standing Senate Committee on Health, Welfare and Science, to which was referred Bill C-202, to amend the Old Age Security Act, met this day at 2 p.m. to give consideration to the bill.

Senator Maurice Lamontagne (*Chairman*) in the Chair.

The Chairman: Honourable senators, we have with us this afternoon the Minister of National Health and Welfare, Mr. John Munro, and some of his officials, including the Deputy Minister, Doctor J. Willard who is well known to members of the Special Senate Committee on Science Policy.

Before we come to discuss this bill, C-202, clause by clause, I should like to invite Mr. Munro to make an initial statement.

The Hon. John Munro, Minister of National Health and Welfare: Thank you very much, Mr. Chairman. Honourable senators, my statement will be quite short. I think many of you are well aware of what the proposal in this legislation is. We think that it fits very well into the overall concept of the White Paper that we presented. As I said in my opening statement to the Standing Committee of the House of Commons, we proceeded on the basis that we should start now to heed much of the advice that we have received as well as what we know ourselves in terms of general principles about the four million Canadians living at the poverty level and below, and to endeavour where we can to put additional new moneys into the income security system and to redistribute the moneys within it in order to try to get into a more meaningful supplementation for the low-income groups.

We have done this to a certain degree and to the extent we could in the legislation you have before you today. I have been asked in this regard, "How can you reconcile keeping the universal old age pension, recommending that it be set at \$80, and not making it selective when you are proposing to do something different with family allowance in terms of income testing it and making the whole program selective?"

We have indicated that we feel that many people presently retired have made plans, private pension plan arrangements, for having this flat rate benefit and that they would be unduly prejudiced if this universal demogrant were made selective. We also realize that it is a flat rate benefit under the Canada Pension Plan and we feel that to make any changes there we would have to have many discussions with the provinces over what I think would inevitably be a fairly protracted period of time.

Basically for these reasons we feel we must continue this universal payment, but at the same time we wanted to look at this program, as we did at the family allowances, to see how we could get more of our financial resources into the hands of those who are, relatively speaking more in need. I would point out that this did not really contribute all that much in the sense that this program would cost roughly an extra \$200 million a year of new moneys, and this can be offset only partially by what we are doing here in setting this figure at \$80. It is quite a small influence indeed. But this is the rationale behind what we feel we must do. We think it is going to mean a great deal in terms of income supplementation to those in need. We are now talking in terms of \$135 a month maximum for a single person with no outside income, and \$255 a month for a married couple. This \$255 for couples who are pensioners lifts it above the poverty line in that particular area. So we are starting to get some real thrust there in terms of income supplementation. The fact is, with the recovery rate of 1 for 2—in terms of you only lose \$1 of your pension for every \$2 of outside income—with this additional increase, that raises the level considerably and brings more people into the guaranteed income supplement program. We estimate people getting either full or partial supplement will number roughly 1,100,000. So that these people will also get, as you realize, the full escalation on what we regarded previously as the flat rate and the G.I.S.

Those people who are not part of this program and will be just getting the universal pension of \$80, they do have the assurance that if, through either sickness or other circumstances their income should drop and they come down to these levels, they will be immediately plugged into the guaranteed income supplement program. So, in essence, that is it.

I would just like to quote, Mr. Chairman, one sentence here from a statement I made before the committee:

I would remind you that it is only single pensioners with an income of more than \$2,280 and married couples with a combined annual income of more than \$4,200 who will no longer get the extra escalation automatically under this legislation.

So it is people above those levels who will not get the escalation, and I think that that should be borne in mind because, as I say, although it does exclude some, when you are talking in income levels of that kind you are including a great many who will get it and who need it.

I think the way we are approaching this guaranteed income supplement, in really enhancing that principle, is a good thing. I think we are one of the first countries in the world to have brought it in—I believe in 1965.

The Chairman: It was first developed in the Senate.

Hon. Mr. Munro: All right, first developed in the Senate. We think it has worked well. It has had its problems administratively, but it has worked well as far as those people who get the benefit of it are concerned. It does not carry with it some of the more demeaning aspects of the previous means testing and, to a lesser degree, the needs testing. They file a statement of their income and, in accordance with the legislation, if their income falls below a certain level they get the supplementation. So, inherently, this supplementation is a matter of right and is not discretionary. So I think that from that point of view it has been a constructive program and, by and large, well received by the old age pensioners in Canada.

Thank you very much, Mr. Chairman.

The Chairman: Thank you, Mr. Minister.

Now we have to consider this bill. There are two ways of proceeding. We either go through it clause by clause right of way, or those who have special questions to ask of the minister as a result of his statement might want to raise them now. Otherwise we will go directly to the detailed consideration of the bill.

Senator Cameron: May I ask the Minister: What is the estimate of the cost had you allowed the escalation to remain for those who would be affected? You say that in the event of illness or adversity a pensioner will, by right, be able to come under the supplement, which will obviously remove a larger percentage than otherwise would be the case. So, what is the cost?

Hon. Mr. Munro: Our estimate of the cost is roughly—if my memory serves me a right, senator—\$15 million in the first year, escalating to roughly \$100 million by 1975.

Senator Cameron: How do you arrive at that figure, because the 42 cents, which I suspect you have heard and will hear a lot about, amounts to \$5.04 per person per year.

The Chairman: It means that we will have a lot of inflation in future years.

Hon. Mr. Munro: It is not the 42 cents, Senator. I am reminded it is \$1.15 a year, if the escalation continued.

Senator Benidickson: For the first year.

Hon. Mr. Munro: Yes, for the first year, starting on January 1, 1971. Then you continue to escalate on escalation.

The Chairman: Just like the compound rates of interest.

Senator Carter: I had the impression that by phasing it at \$80, at a certain level you were saving a certain number of dollars. I understood that was enough to cover the extra money you are giving down below, apart from the supplement.

Hon. Mr. Munro: No. I have just given the figures that are affected and the overall cost in the first year of the

new benefit structures under the Guaranteed Income Supplement is an extra expenditure of roughly \$194 million—or, say, roughly \$200 million. That is the estimate of the additional expenditure compared to what is being spent now.

Senator Carter: I thought what you were saving at one end was enough to cover the increase at the other.

Hon. Mr. Munro: No. What I hoped we could do is look at this in totality. I know that this is one piece of legislation, but really, in effect what we are doing here and what we propose to do, and we are throwing out for viewpoints—the same as in the family allowance structure—is that we are looking at the totality, if you like, of the income security programs, with particular emphasis on the universal programs, and we are seeing there how we can redirect more moneys that are in the system to those more in need. So, we are following that principle here, as we are in the family allowances, but if you just look at the guaranteed income supplement program alone then you are certainly not recouping everything you are redirecting down below by any means.

Senator Benidickson: Would you agree with some figures that I have read? If we assume that there is inflation of two per cent or more per year for ten years, then the purchasing power of \$80, without escalation, will go down in ten years to \$64. Is that a figure that you have accepted?

Hon. Mr. Munro: If you proceed along those assumptions I do not think the value is decreased by that much. I just want to indicate too that when you start talking about the future, and in terms of ten years from now, then you have got to think also in terms of the impact of the Canada Pension Plan on people who will be retiring in the future. That plan, in effect, matures in 1976. I have figures that indicate the number of people who will be covered under the Canada Pension Plan because they have contributed to it, and so on, because they are in the labour force. I thought it might be of interests to know that under that social insurance scheme, Mr. Chairman, we anticipate that by 1976 there will be roughly 444,000 pensioners in pay under that program.

I have other figures here that bring the total of beneficiaries in pay under the program up to 864,000. The remaining number comprise people who will be receiving disability benefits, survivor's benefits—orphans, and children and widows of the disabled. So, each year we proceed into the seventies the impact of that program is going to be felt more and more in this area.

Senator Carter: Would you give the maximum and minimum amount that a person could get in the first year the plan comes in full effect?

Hon. Mr. Munro: Yes, I can, senator. I would like to do it on the basis of the acceptance of the suggestions that are in the White Paper for improvements in the benefit structures of the Canada Pension Plan. We have had talks with the provinces over the course of the last couple of weeks, when I went around to see some of the welfare ministers to talk to them about getting their

agreement to certain changes in the Canada Pension Plan. This, mind you, is an initial reaction, but they indicated that they were quite amenable to waiving the three-year rule in terms of changes, and they thought that the benefits structure under the Plan should be improved, and were prepared to meet with us right away.

So, on that basis, and if our recommendations are accepted and the new flatter rates of benefits we are proposing under the Canada Pension Plan are adopted, there would be increased benefits in relief for those people who are in pay. The increases would, in effect, be retroactive for them, and they would get the new flat rate of benefits.

On January 1, 1976, under the White Paper proposals, \$156.64 a month would be the maximum benefit, on top of which you would have to add the universal pension of \$80. If the legislation is left as it is, then in 1976 that amount would be \$120.83, plus the universal pension.

Senator Benidickson: That answers the question I was going to put. I was going to ask about the tie-in of the \$80 and the amount paid under the Canada Pension Plan.

Senator Carter: Those are maximums?

Hon. Mr. Munro: Yes.

Senator Carter: What are the minimums?

Hon. Mr. Munro: You could go anywhere from this figure right down to the point where—well, I do not think you could go right down to the Old Age Security Pension of \$80. Once you start getting down into the lower benefit structure under the Canada Pension Plan the guaranteed income supplement cuts in and begins to supplement it to their levels.

Senator Benidickson: Some of this comes, as the minister knows, on pretty quick notice to the Senate, which is unaware of amendments which may have been made in the other house. We only received this bill this morning, knowing that there were no amendments. I wonder if I was right in some of the reading I did last night? If a person establishes any entitlement, even one dollar, for guaranteed income supplement, would escalation then apply to the whole package?

Hon. Mr. Munro: That is right.

Senator Benidickson: Following that I refer to the fact that lack of escalation might reduce the purchasing power of \$80 in 10 years to \$64. There were figures in the same sitting in the committee of the other place which indicate that if a person were entitled to one dollar guaranteed income supplement in addition to the \$80, with escalation of 2 per cent over 10 years the purchasing power of the universal portion of the pension would go from \$80 to \$90.

Hon. Mr. Munro: Yes, I think that is accurate. I might just add that I think there is a certain soundness in rationale there. In other words, a person receiving old age pension without escalation whose income temporarily

ceases and who receives even only one dollar of income supplementation has established a need. For that year he would receive the escalation portion.

The Chairman: This is in order to establish some kind of continuity corresponding to the need.

Hon. Mr. Munro: Yes, that is right.

Senator Benidickson: What is the paper surplus of tax take from designated taxes under the 3-3-4 formula that were supposedly for the purpose of disbursement under the Old Age Security Act? Is \$725 million a fair figure for the surplus?

Hon. Mr. Munro: I think that figure is what is in quotes identified as in the fund now. That is cumulative over a period of years. With respect to the amount coming in each year, it varies, of course, according to the economic conditions of the country. We would endeavour to obtain that figure for you. It is earmarked from that point of view. However, it is not as though it actually were there in a fund; it is revenue coming into the Government and it is money that has already been spent.

Senator Benidickson: Where taxes have exceeded outgo over a certain period of time.

Hon. Mr. Munro: Yes.

The Chairman: Are you ready now to proceed to the examination of this bill clause by clause?

Hon. Senators: Yes.

Hon. Mr. Munro: I would first like to make one further comment. I quite agree with you; I do not think the Senate has had this legislation as long as it might have, which I very much regret. However, I would indicate that we are very concerned about the administrative problems. We feel that if this legislation does not go through right away we will not get pensions and pay by April 1. In fact, there will be many pensioners receiving a guaranteed income supplement who will not get the new benefits now that they otherwise would. We calculate it will be perhaps three months before we can cover them all. If we run into too much delay it will be impossible to get these pensions in.

Senator Benidickson: In each case they will get a 2 per cent escalation on January 1.

Hon. Mr. Munro: Oh yes.

Senator Benidickson: And those who are entitled to G.I.S. will get the 2 per cent for January, February and March?

Hon. Mr. Munro: Yes, on the basis of the old system.

Senator Benidickson: If this bill passes in its present form, those who would get \$81.15, say, on January 1, 1971, will get only \$80?

Hon. Mr. Munro: That is right.

Senator Flynn: If the Senate sent back the bill with an amendment maintaining the escalation clause and you

agree to it, it would take only five minutes for the other place to accept it.

Hon. Mr. Munro: No, senator. For the reasons I have already stated, we think this makes sense.

The Chairman: Senator Flynn always asks these hypothetical questions. I remember that he was once a member of the government who was not very anxious to accept amendments coming from the Senate.

Senator Flynn: We could start a long debate again, Mr. Chairman. You have a talent for doing that.

Senator Cameron: I have a hypothetical question, Mr. Minister. Suppose there was an amendment. Would there be any reason why, if the bill was delayed, when it was ultimately passed any change could not be retroactive if it was delayed beyond April 1, as you say? It seems incredible that it would take three months to incorporate a change.

Hon. Mr. Munro: It may sound incredible, but when you start to alter the benefit structure on the guaranteed income supplement, we have a detailed schedule, in terms of time, there have to be new pamphlets, new applications have to be sent out to everybody, which we could not have ready until the early part of February; people have to familiarize themselves with it. We would not start even now to get applications in for the new benefit until about mid-February. These all have to be processed and run through the computers. A very detailed apparatus is needed to get it set up, and it is not very hard to see, if you want to go into it in detail, just how intricate this is to get going. That is what we are faced with. Dr. Willard reminds me that we are here dealing with a million or more people.

Senator Benidickson: Somebody was arguing this morning in the Senate, when we had a short debate, which was all we could do today...

Senator Flynn: Too short.

Senator Benidickson: Too short. One senator was concerned about having two classes of recipients, and had some kind words to say about the original universality...

The Chairman: Is that not the obvious purpose of this?

Senator Benidickson: Yes. He had some kind words to say about the merits of universality. Have you made any calculation what the outgo from the treasury would be if the maximum payments of \$135 for a single person and \$255 for a married couple were paid on a universal basis?

Hon. Mr. Munro: Yes, we know for instance that if we tried to get these on a general basis rather than on the income-tested basis and continued to follow the universal route, to lift it from \$80 to \$90, the \$10 would cost in excess of \$200 million a year. Even if you did that you could say to senior citizens in need, "What good is that \$10?" For every \$10 you go up you are talking roughly about another \$200 million. We calculated, for instance, that to give \$150, which was one proposal by the opposi-

tion in the house, the universal pension would cost roughly \$1.1 billion a year extra over what we are spending now.

Senator Flynn: How much would come back by way of income tax?

Hon. Mr. Munro: We would have to tax it back, of course. At what rates you would start in the higher income groups in order to apply this is still not determined. Presumably if you try to get a selective approach through the tax system at the higher rate I suppose you would try to recover almost 100 per cent.

Senator Benidickson: Not under the White Paper proposals. Personal income taxes would not be much, but now they go to 83 per cent.

Hon. Mr. Munro: If the White Paper proposals were followed you would get some idea of the leakage which occurs and how much you are losing that could otherwise be redirected to the lower income groups.

Senator Flynn: You have to calculate under the present system, because the White Paper appears to be very distant now.

Hon. Mr. Munro: I think maybe it would be more appropriate to direct that to the Minister of Finance.

Senator Robichaud: Is it not a fact, as you stated earlier, that over 1,100,000 pensioners will benefit under the guaranteed supplement under this new bill?

Hon. Mr. Munro: That is right.

Senator Robichaud: So, it is over half the number of pensioners. If they were getting \$150 a month under the universal program they would pay a very small amount of income tax, if any at all. It would already take care of over \$500 million, which is over half the \$1.1 billion extra that would be required if the pensions were raised to \$150 universal. Over half of those pensioners already are entitled to the G.I.S.

Hon. Mr. Munro: Sixty per cent.

Senator Robichaud: Which is 60 per cent. Therefore, 60 per cent of this amount already has been taken care of.

Senator Forsey: Mr. Chairman, I wonder if I could ask the minister to explain something about the policy of this bill, because it rather sticks in my craw. As I understand it, pretty well all of the people who are now receiving pensions, such as retired members of the Public Service and retired members of the two Houses of Parliament, have an escalation clause in their pension plan. Is that correct?

Hon. Mr. Munro: Yes.

Senator Forsey: What I cannot understand is why senators and civil servants should be treated one way and these other pensioners should be treated in another way. It seems to me that most people under these other plans, and certainly the members of the Senate and the House of Commons, are in less need than the people who

will get the basic \$80 pension. I cannot see why fish is made of us and fowl of the old age pensioners.

The Chairman: Are you not comparing two things which are not comparable? In one case you have a direct contribution scheme and in the other you have a general scheme.

Senator Forsey: I know that, but that does not affect the point I am making.

The Chairman: I am sorry, I should not answer questions.

Senator Forsey: I would say that I asked the minister through you, Mr. Chairman.

Hon. Mr. Munro: I must thank the chairman for the answer. That is correct. I do not think you are talking about comparable things. One is in essence and insurance program which is based on contributions from the people covered. Retirement plans in the Public Service or private pension plan arrangements in the private sector are usually based on contributions from the employer and employee. That is definitely a contractual relationship. They are contributing for a benefit which they get in accordance with actuarial studies that have some relation to their contributions. Here we are talking about public expenditures for those people who for one reason or another have not been able to get protection under these schemes or, if they are, their wage levels are so low that the benefits they get are inadequate and can be supplemented under these schemes. Where that occurs, and where the income tax test identifies the person who really requires help, then he gets the escalation.

Senator Forsey: I understand that, but I should have thought this distinction between contributory and non-contributory was beside the mark, because we have special taxes which are earmarked for the purpose of supporting this basic old age security. In a sense, all these people are contributing, unless they are so very poor that they have absolutely nothing to pay in income tax; and this cannot apply to a very large number of them, surely. The taxes earmarked for old age security are surely being paid to a very large extent by the people who ultimately benefit.

Hon. Mr. Munro: In any case, people in the low income groups are not paying the tax. I also communicate that really it is stretching it pretty far—I say this, with respect—to say that there is any contractual relationship there. Those taxes under the OAS fund come from corporation taxes, sales taxes...

Senator Forsey: Everybody pays those, including sales taxes.

Hon. Mr. Munro: But the corporation does not expect to get a pension upon retirement, either. So there is no direct relationship there in terms of any type of contract that exists when you are talking about a contributory plan.

Senator Forsey: I agree that there is a difference, but in principle it does not seem to me that it affects this particular matter.

Senator Benidickson: Do you recall—I do not—how soon after the principle of selectivity was introduced in 1965-66, or whenever it was...

Hon. Mr. Munro: It was 1967.

Senator Benidickson: How soon after that was authorized by Parliament—involving considerable extra expense—did the Minister of Finance increase the designated special tax for the purposes of the aged, from 3 per cent to 4 per cent?

Hon. Mr. Munro: I am advised it was about the same time.

Senator Benidickson: It was pretty well coincidental.

Hon. Mr. Munro: I might just indicate one added feature here, too, that was pointed out and identified at the House of Commons Committee. On this escalation feature and the guaranteed income supplement, if in any year the cost of living should go up less than 2 per cent, then the legislation is so designed that we can pick up excesses over 2 per cent in previous years. That can be brought into account. For instance, if three years ago, two years ago, and so on, the cost of living was 3 per cent and this year it was 1.7 per cent, then this year it would be 2 per cent and if in each succeeding year it was less than 2 per cent, the escalation would continue on at 2 per cent, until an overages were picked up that occurred in the past.

Senator Benidickson: Does anyone think really that over say a ten year period, unless we have continuing massive unemployment, that on average the inflation would be less than 2 per cent?

Hon. Mr. Munro: As I indicated, senator, again at the committee, back in 1967 when we arrived at the 2 per cent, it was based on experience of the previous ten years, and the average was less than 2 per cent a year. This year, naturally, we hope we can keep it to that or less than that—this year and in the future. This year, the indications are that it will probably be less than 2 per cent.

Senator Forsey: I am afraid that sounds like one of Senator Flynn's hypothetical questions, except that in this case it is pure conjecture. I hope the minister is right.

Hon. Mr. Munro: I hope so, too.

Senator Forsey: But I must say that I am a bit skeptical.

Senator Benidickson: I am glad to hear that there is a ten-year experience base behind these figures, going back from 1966, because the 2 per cent has for quite a number of years in the recent past really been quite an embarrassment owing to the fact that the cost of living index

has gone up considerably more than 2 per cent in those same years and that the people who were receiving old age pension during those years were the ones who were suffering.

Hon. Mr. Munro: I might also indicate, Mr. Chairman, that it is always the right of any Parliament to make adjustments in the flat rate. For instance, even if back in 1967 we had put no limitation on the ceiling, adjustments could have been made. But we did put on the 2 per cent limit. If there had been no limitation on the ceiling, the benefit, which, with the 2 per cent, is now up to \$111 and some odd cents, would be about \$123; that is if it had just been allowed to escalate in accordance with the cost of living.

We felt that the escalator clause did not really cope with the situation at all times; so we found this was inadequate and we tried to make it more adequate, and, in fact, increased the flat rate as that escalation would not have taken care of it.

Senator Kinnear: Mr. Minister, in respect of very low income tax groups who do not submit income tax returns, how do you reach such people? I have in mind particularly widows who have only small bank savings which they supplement by such work as char work, earning perhaps \$200 or \$300, and who are reluctant to file returns. I am convinced there are many people in the area which I come from who are not filing income tax returns but who have practically nothing to live on. Again I ask how do you reach those people?

Hon. Mr. Munro: Well, applications are submitted. Here it is not directly related to the income tax system. We invite them to make statements of their income and from that we calculate what their benefit is. In the example that you give with respect to widows, the woman would, on her statement of income, show earnings at very low levels, as you describe, and in that case she would receive partial benefit under the guaranteed income supplement and would thus get the full amount.

Senator Kinnear: Then I suppose such people should write to the Department of Health and Welfare?

Hon. Mr. Munro: That is right.

Senator Benidickson: With respect to the type of person Senator Kinnear was referring to, the department deals with the person only on the form of the application so far as receiving the income is concerned. It is from the point of view of the department's recovery of overpayments that the department utilizes the Income Tax Act. In that case, where incomes are high enough, the department gets a refund.

Hon. Mr. Munro: That is right.

Senator Carter: Mr. Minister, you mentioned the average figure of 2 per cent over a ten-year period. I should like to know, and have it on record, if possible, if there is a comparable figure for the productivity during the same period. This may not be the appropriate place to ask for that information, but I cannot see how prices would remain stable for so long a period unless productivity

kept pace with the prices. If that is the case, then we have gone into a different world and will stay there from now on.

Hon. Mr. Munro: I will not argue against that observation, senator, but that ten-year period, to the best of my recollection, was one of relatively high productivity. I believe we are talking in terms of 4 per cent or 5 per cent during that period. I do not know whether you consider that high or not.

Senator Carter: Is there any way we can get that information?

The Chairman: The Dominion Bureau of Statistics, at least to the extent that their figures on productivity are reliable, could provide you with such figures quite easily, I should think, senator.

Senator Forsey: They would hardly supply us with estimates for the future.

The Chairman: Certainly not. They are not a forecasting agency.

Senator Carter: The point is, Senator Forsey, that such figures would show that a factor was present in that ten-year period which is not present today and may never be present again. That is the point.

Senator Forsey: Quite. I see.

The Chairman: Are there any further questions?

Senator Benidickson: I do not quite understand what happens now, Mr. Minister. You gave us a figure of approximately \$2,250.

Hon. Mr. Munro: Yes, \$2,280.

Senator Benidickson: And that refers to what?

Hon. Mr. Munro: A single pensioner with an annual income in excess of that would then not get G.I.S. and would therefore lose the escalation. A married pensioner with over \$4,200 would lose the escalation.

Senator Benidickson: Then they are completely out of the escalation, and they go back to the \$80 if they have gross income at those figures.

Hon. Mr. Munro: The \$80 is calculated in that and both those figures in terms of the poverty-line concept drawn by the Economic Council in the White Paper are above that poverty line.

The Chairman: Shall we reserve clause 1 for the time being?

Senator Benidickson: I think it is tied up with subsequent clauses.

The Chairman: Well, the title then. Shall clause 1 carry?

Senator Cameron: Mr. Chairman, I move that clause 1 stand until we discuss clause 2, lines 4 to 11. If I may, I shall say what I have in mind in that regard. I should

like to make the observation that it is rather an interesting coincidence that today we have in this room and at the present time the man who was probably the father of the welfare legislation program in Canada, and I am, of course, referring to the Honourable Paul Martin, the Leader of the Government in the Senate. We also have his very able successor in the person of the present Minister who is, I think very much with the thinking of the times, and who is very ably supported by one of the civil servants for whom I have the highest regard, Doctor Willard. I say that because I want it understood that I say it in the kindest way having regard to what is to follow, and in the light of the present season.

First of all I should point out that for some reason or other I only received this White Paper on Tuesday of this week. I do not know where it has been in the meantime, and I do not know how many other senators are in the same situation. We certainly have not had time to discuss this.

Senator Robichaud: It was tabled on the first of December in the Senate.

Senator Cameron: Well, I got it in my mailbox on Tuesday of this week.

Hon. Mr. Munro: It was sent around the corridors to all offices of senators as well as members when it was tabled. However, I can check on that.

The Chairman: Perhaps Senator Cameron was in Windsor at that time.

Senator Cameron: Yes, but I was going to observe that the intra-parliamentary mail service seems to be as bad as what we now have in the post office.

However, Mr. Chairman, I move that clause 1 stand until we discuss clause 2, and then, to put it all on the table at one time, I move that we delete clause 2, in which case the original section 3A would stand. The effect of this would be to leave the legislation as it is. My reason for raising this at this time is to suggest that this gets around, I think, the constitutional difficulty involved. The Senate cannot change a monetary bill by increasing the amount. Therefore I am moving that clause 1 should stand at this time.

The Chairman: But by this method you are changing the present bill.

Senator Forsey: But not the present legislation.

The Chairman: But you are changing the present bill.

Senator Benidickson: We have already appropriated it. You cannot call this a new appropriation or something of that kind. We have already put on the statute books an appropriation to provide for escalation.

The Chairman: I am certainly not an expert on the rules, but here you have a bill presented by the Government which provides for certain expenditures.

Senator Robichaud: And a new appropriation.

The Chairman: And a new appropriation. By this amendment, although we do not change the present legislation, we change the bill and we impose a new financial obligation.

Senator Forsey: No.

The Chairman: Yes, according to this bill we are imposing a new obligation.

Senator Forsey: The rest of the bill imposes a new obligation, yes, but if you say we are debarred from striking out a clause in a bill before us, you are making pretty serious inroads into the powers of the Senate. Am I to understand that if a bill is presented to us we cannot move to strike out a clause?

The Chairman: Yes, in general you can, if there is no financial obligation. This is not a limitation on the Senate only.

Senator Robichaud: Mr. Chairman, if this clause is deleted, is there not an appropriation of \$15 million over and above the content of this bill?

Hon. Mr. Munro: That is the effect.

Senator Benidickson: Was there not a motion made by the opposition yesterday in the other place to the same effect, which was not challenged and was put to the vote without the Speaker saying that it was out of order?

Hon. Mr. Munro: It was not challenged.

Senator Fergusson: Mr. Chairman, could we hear from our legal counsel? I am sure I have every faith in your interpretation.

The Chairman: No, don't!

Senator Cameron: I would like to hear from him too.

Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel: Honourable senators, I am reminded of the story of a man who witnessed the Jamestown flood at one time and from then on he was always asked to speak about the Jamestown flood. He died and went to Heaven and Saint Peter asked, "Is there anything I can do for you?" To which he replied, "You might possibly gather a few people together and I could talk to them about the Jamestown flood." Saint Peter said, "I would be delighted to do that, but I warn you that we have Noah here." I say that because in welcoming Senator Forsey I welcome a great constitutional expert.

The Chairman: But he is not any better than I am as far as the rules of the House or Senate are concerned.

Mr. Hopkins: If I may, I would like to isolate the legal and constitutional question, as I conceive it, in its proper context. That is as far as I feel I can go. The situation is this, that since 1918 the Senate has classically been guided by the Ross Report of that year, which report was prepared by two eminent lawyers, Geoffrion and Lafleur.

What they said at that time—and I think I have the nub of what they said—was this:

The Senate of Canada has, and always has had since it was created, the power to amend bills originating in the Commons appropriating any part of revenue or imposing a tax by reducing the amounts therein, but has not the right to increase the same without the consent of the Crown.

Now, I am not a humanized computer, but this is a question of law which depends ultimately upon a question of fact—whether or not the adoption of any amendment or amendments moved here would have an appreciable effect upon the appropriations required by increasing them. If that is the case, any such amendment would, in my opinion be unconstitutional.

On the other hand, and I repeat the classical position, the Senate may reduce the amounts in any appropriation.

That leads us to a simple question of fact: Would the proposed amendment add charges amounting to \$15 million, as Senator Robichaud suggested in the case of the proposed deletion? I do not think the way in which you do it makes any difference. What we are dealing with are the appropriations in this bill.

I shall have to defer to the Minister and his colleagues with respect to the computerized situation, and as to what would happen factually.

May I point out further that there is a difference between amending just one clause, Clause 2 and then amending Clause 1. I do not see how you could amend Clause 2 and not amend Clause 1.

Senator Benidickson: That is why Clause 1 stood.

Mr. Hopkins: Yes, at the moment.

Senator Forsey: But then there would be a consequential amendment.

Mr. Hopkins: Yes. As I said before, I bow to Noah. I am not going to nit-pick about whether it is one clause or another. It is a question of fact as to whether the changes suggested would increase the charges upon the treasury.

Hon. Mr. Munro: May I answer that in two ways? On the question of fact in its absolute terms, we calculate that if Clause 2 were deleted, and consequentially Clause 1, this would mean an additional cost of \$15 millions.

You can look at it in another way. This proposal, so far as the Government is concerned, is being advanced in the context, as I endeavoured to indicate, Mr. Chairman, of the overall thrust of the White Paper. You may agree with it or not, but it has been done in that sense. We looked at the cost aspect, obviously, and we came to the conclusion that we are prepared to spend so many dollars. We came to the conclusion that we would spend additional moneys in this program, and we took into account the moneys that would be saved here and saved there, and so on. We decided in the overall theme of this bill what would be saved if you removed the escalation clause on the \$80 as against what additional drain it would have on our revenues.

So, we arrived at a conclusion on how we could lift the new benefits structure to what we are now recommending on a saving of \$15 million here, and so on. So, if you remove this clause you are in effect saying to the Government: "Look, you may have calculated an expenditure of X number of dollars—you could say in this case it is \$194 million plus \$15 million—but we are saying to you that we are going to impose upon you the obligation of sticking with your \$194 million that is additional to finance this program plus an additional \$15 million." If we had known that we might have come to different conclusions with respect to what the benefit level would have been in the guaranteed income supplement in terms of what our resources would have been.

So, to say that is not imposing an additional charge on our revenues and increasing and incurring further expense is really quite fictional.

Senator Robichaud: In other words, Mr. Minister, if you had known this you would have deducted \$15 million from what you are now providing for the most needy old age pensioners?

Hon. Mr. Munro: Yes.

Senator Benidickson: What about the peculiar circumstance we have on paper when we talk about the fact that from ear-marked taxes we have a surplus of \$725 million beyond what we have hitherto spent.

The Chairman: Do not forget that we had a lot of deficits too.

Senator Forsey: Mr. Chairman, may I raise a point of order. There is no question at all in my mind that the Senate has no right as a general principle to increase charges upon the public revenue. That is plain in the British North America Act.

On the other hand, it seems to me equally clear that a private member of the House of Commons has no right to move a motion which will increase charges in the revenue. Yesterday in the other place a private member did precisely that. It was ruled out of order; it was voted down, to be sure. This is the fate which may attend any motion, however admirable or however worthy. My point is that it was not challenged and it seems to me that if a private member in the House of Commons has a right, as apparently the house and the Government thought because it made no objection to overrule that motion, by the same token a motion of this type is in order by the Senate.

Mr. Hopkins: I would say that to base a conclusive legal opinion on what is or is not challenged in the House of Commons is not the manner in which I would approach the matter at all.

The Chairman: I am not going to approach it in that manner either.

Senator Cameron: I do not want to prolong this, as we have a busy day. However, I would suggest that in the light of the correspondence which I know is building up, not so much in the Senate, we do get some, but in the

House of Commons, this will be a controversial issue for a long time. I brought this up feeling that there was a chance that it might be turned down on constitutional grounds but that it was important that some members of the Senate who are not happy with this particular clause have the opportunity of registering their dissatisfaction in this way. I say this almost with regret because of the high regard I have for the work being done by the minister and his associates.

I will put it this way: to solve this immediately we should call a vote and make a decision.

The Chairman: It is the function of the Chair to decide whether this amendment is in order. Then, of course, it is the privilege of the members of the committee to appeal the decision of the Chair.

As far as I am concerned, having been brought up in a very conservative way in the House of Commons and considering this to be a Government bill which would increase expenditures, having seen a lot of these amendments in the past declared out of order, I so declare this out of order.

Senator Cameron: Mr. Chairman, we bow to your superior wisdom.

Senator Forsey: We bow to your ruling as far as I am concerned.

Senator Fergusson: I would have voted for the amendment had the vote been called.

The Chairman: I might also have voted for it. If there is no appeal from my ruling we should return to clause 1.

(Clause 1 carried.)

(Clause 2 carried on division of Senators Forsey and Cameron.)

(Clauses 3 to 13 carried.)

(Title carried.)

Bill reported without amendment.

The Chairman: Thank you very much, Mr. Minister.

Hon. Mr. Munro: Thank you Mr. Chairman and honourable senators.

The committee adjourned.



THIRD SESSION—TWENTY-EIGHTH PARLIAMENT

1970-71

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING SENATE COMMITTEE ON
**HEALTH, WELFARE
AND SCIENCE**

The Honourable C. W. Carter, Acting Chairman

No. 3

THURSDAY, March 11, 1971.

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First Proceedings on Bill C-203

intituled:

**“An Act to amend the Pension Act and the Civilian
War Pensions and Allowances Act”**

(Witnesses:—See Minutes of Proceedings)

THE SENATE COMMITTEE ON HEALTH,
WELFARE AND SCIENCE

Chairman: The Honourable Maurice Lamontagne

The Honourable Senators:

Bélisle
Blois
Bourget
Cameron
Carter
Connolly (*Halifax North*)
Croll
Denis
Fergusson
Fournier (*de Lanaudière*)
Fournier (*Madawaska-
Restigouche*)
Gladstone
Hays
Hastings
Inman
Kinnear
Lamontagne
Maedonald (*Cape Breton*)
McGrand
Michaud
Phillips (*Prince*)
Quart
Robichaud
Roebuck
Smith
Sullivan
Thompson
Yuzyk—(28)

Ex officio Members: Flynn and Martin

(Quorum 7)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, Thursday, March 4, 1971:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Hays, P.C., seconded by the Honourable Senator Denis, P.C., for the second reading of the Bill S-11, intituled: "An Act to provide for the obtaining of information respecting weather modification activities".

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Hays, P.C., moved, seconded by the Honourable Senator Denis, P.C., that the Bill be referred to the Standing Senate Committee on Health, Welfare and Science.

The question being put on the motion, it was—
Resolved in the affirmative."

Robert Fortier
Clerk of the Senate

Minutes of Proceedings

Thursday, March 11, 1971.

(3)

Pursuant to adjournment and notice the Standing Senate Committee on Health, Welfare and Science met this day at 10:00 a.m.

Present: The Honourable Senators Carter, Connolly, (Halifax North), Fergusson, Flynn, Fournier (De Lanau-dièrè), Inman, Kinnear, McGrand, Michaud, Phillips, Quart and Smith—(12).

Present, but not of the Committee: The Honourable Senators Lang and White—(2).

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

On motion of the Honourable Senator Smith it was *Resolved* that the Honourable Senator Carter be elected Acting Chairman.

On motion of the Honourable Senator Phillips it was *Resolved* to print 800 copies in English and 300 copies in French of these proceedings.

The Committee proceeded to the consideration of Bill C-203 "An Act to amend the Pension Act and the Civilian War Pensions and Allowances Act".

The following witness was heard in explanation of the Bill:

Mr. C. Chadderton, Secretary,
National Council of The National Veterans' Organizations of Canada.

The following persons were also heard by the Committee later during the meeting:

From the *Dominion Command, Royal Canadian Legion:*
Messrs. H. Hanmer and E. H. Slater, Service Officers.

On motion of Senator Phillips the Committee adjourned until the arrival of the witnesses representing the Department of Veteran's Affairs.

At 10:30 a.m. the Committee resumed.

The following witnesses were heard:

From the *Department of Veterans' Affairs:*

Messrs. J. S. Hodgson, Deputy Minister; P. Reynolds,, Chief Legal Adviser;

From the *Canadian Pension Commission:*

Mr. T. D. Anderson.

During the proceedings, Senator Fournier (De Lanau-dièrè) moved that the Committee adjourn. The question

having been put, was *Resolved* in the negative. The Committee continued its consideration of the Bill.

At 12:30 p.m. the Committee adjourned to the call of the Acting Chairman.

ATTEST:

Patrick J. Savoie,
Clerk of the Committee.

The Standing Senate Committee on Health, Welfare and Science

Evidence

Ottawa, Thursday, March 11, 1971

[Text]

The Standing Senate Committee on Health, Welfare and Science, to which was referred Bill C-203, an Act to amend the Pension Act and the Civilian War Pensions and Allowances Act, met this day at 10 a.m. to give consideration to the bill.

Senator Chesley W. Carter (*Acting Chairman*) in the Chair.

The Acting Chairman: Honourable senators, I express my thanks to you for electing me to preside over this meeting. I am sure that I am expressing the thoughts of all when I say how sorry we are that our regular chairman, Senator Lamontagne, is not able to be present, and how much we wish that he will soon be back with us.

Senator Phillips: Before we proceed, may I raise a point that was mentioned by Senator Fergusson before the committee began, which is the method of calling Senate committees. It has been traditional that a committee be called by the Chairman. In this case unfortunately the chairman is absent due to illness and there is a tendency within the Committees Branch, as soon as a bill gets second reading, to come out with the notices. They seem to anticipate this, and this creates problems.

I know that Senator Grosart would very much like to have been present this morning, but the Transport and Communications Committee is sitting at the same time. As honourable members know, Senator Grosart replied for our side in the Senate—I do not like to use the word “opposition”—in the debate on the second reading of the C.N.R. financing bill, and therefore he has to attend that committee.

I think Senator Fergusson stated before the meeting that she had four committees to attend this morning. It is very difficult for us to attend every committee and, in addition, it is very unfair to those people who appear before us. This committee should make a recommendation that we revert to the traditional practice of a member of the Senate calling the committee, and not the Committees Branch. In that manner there will be co-operation and co-ordination among senators.

The Acting Chairman: I think the point is well taken. Most members of this committee are members of other committees which are sitting at the same time. The Foreign Affairs Committee is sitting, which I am supposed to attend there at 10.30 this morning. This is a problem that arises very often, particularly when the Senate becomes more active.

It is a problem that has existed in the other place for many years. They have overcome the problem to some

extent by appointing a co-ordinator of committees, and perhaps the time has come when we should adopt the same procedure. However, the honourable senator's remarks are on the record and I am sure they will be noted.

Senator Phillips: Your suggestion of a co-ordinator, Mr. Acting Chairman, is an excellent one.

Senator Fergusson: I should like to know whether the work of the co-ordinator in the House of Commons is successful?

The Acting Chairman: I do not think it is one hundred per cent successful because there are still some complaints, but it is a great improvement on what it used to be. We now have in the Senate almost as many committees as they have in the other place, and we have fewer people to man them.

Senator White: Would the Acting Chairman be able to tell the committee how many veterans' organizations were notified and how much notice and time was given; all the information pertaining to the notice given?

The Acting Chairman: Mr. Chadderton, what time were you advised last night of the sitting of the committee?

Mr. C. Chadderton, Secretary, National Council, National Veterans Organizations of Canada: We were advised first on Tuesday evening to get ready, advance notice, and yesterday morning we were advised again that it looked as if the bill would be referred and we started to work on our own brief.

I might add, for the information of honourable senators, that in the veterans organizations we have a co-ordinating committee that speaks for all of the national veterans' organizations. In a sense I am the co-ordinator of that committee, and it has been the practice in the other place to advise the Dominion Secretary of the Legion and myself, and in that sense all national veterans' organizations are covered. When Mr. Hinds contacted the Legion and me, then I think we can say that in effect all the national veterans' organizations who were interested in this bill were notified that the matter was coming before the Senate committee.

The Acting Chairman: You had ample notice?

Mr. Chadderton: We started to work on our brief yesterday afternoon. We have finished it and it would be up to the Senate to say whether we did the right job. However, we are satisfied with the brief and that we had sufficient time.

The Acting Chairman: I think that answers your question, Senator White?

Senator White: I do not know, but I appreciate what Mr. Chadderton said, that he was advised yesterday afternoon.

The Acting Chairman: No; he said he was advised Tuesday night.

Senator White: But he was advised yesterday afternoon to have the brief ready for the next day. This whole thing is just a rush, a scramble, when there is no need for it.

Senator Smith: When we have the representatives of the Department of Veterans Affairs here, then the matter or urgency can be described by them. I have been made aware of some of the reasons and I have been quite satisfied that there is some urgency, and as each day and each week goes by there is some urgency. I would not be too surprised if the representatives of the veterans' association would not indicate that there is some measure of urgency about this bill.

The Acting Chairman: Thank you, Senator Smith.

Senator Phillips: You seem to be anticipating the brief, Senator Smith.

Senator Smith: I have not read their brief. Perhaps you have been previewed on this; I have not.

Senator Phillips: I also wish to raise the question that there is no one here representing the Department of Veterans Affairs. Were they invited?

The Acting Chairman: Yes; I was going to say, before you raised your point of order, that we have before us Bill C-203. The first witnesses were supposed to be the Deputy Minister; the Chief Legal Adviser, Mr. P. Reynolds, of the Department of Veterans Affairs; and the President of the Canadian Pension Commission, Mr. T. D. Anderson. However, they have been detained so we will proceed with the brief submitted by the National Veterans' Organizations of Canada.

We have with us Mr. Chadderton, who has been introduced; co-ordinator of committees; Mr. Hanmer of the Royal Canadian Legion; and members of their staff.

If there are no more points of order...

Senator Phillips: I am not completely satisfied that we should proceed without the representatives of the Department of Veterans Affairs. I can understand that at certain times the minister is otherwise engaged and cannot be present, but I think it is an insult to the committee, to the Senate and, indeed, to the National Veterans' Organizations of Canada that there is no one here. I do not say it has to be the minister; I would like him to appear, but it is certainly most unusual for us to begin in the absence of representatives of the department. I think that we are entitled to a better explanation than that they are delayed.

The Acting Chairman: They are due here at 10.30 a.m., which would be another seven minutes, if you wish to adjourn for that period.

Senator Smith: No.

Senator Phillips: I do not think we should ask our witnesses to present their brief until the department is represented.

The Acting Chairman: I am in your hands.

Senator Smith: I do not see why we cannot go on and have the brief on our record. It is not a new subject, I am sure, to the Department of Veterans Affairs. A brief of this nature has already been presented to the House of Commons committee. The substance is far from being new. I see no injustice; I do not feel the least bit insulted because they, for some good reasons which we can ask them if we wish, happen to be half an hour late for our meeting. It would be a terrible waste of everyone's time if we did not proceed and have some of these comments, which we are all anxious to hear, on the record.

I do not think it is a bit unusual if one side of a case is presented before another. In any event, it is not our practice to worry about who comes first or second. Our prime concern is to give people a hearing.

Senator Phillips: I have attended a good many committee meetings and this is the first one I can recall that there was not a representative of the department present. Maybe you people know of a precedent; I do not.

Senator Smith: I know some precedents; let it go at that.

The Acting Chairman: Are you agreed that we proceed with the witnesses who are present?

Some hon. Senators: Agreed.

Senator Phillips: Nay.

Senator White: Mr. Chairman, do you mean that if Mr. Chadderton is presenting his brief and the deputy minister arrives the presentation will be interrupted?

The Acting Chairman: No, I think they are also interested in hearing the representations of the witnesses.

Senator Phillips: I move that we adjourn until we have a representative of the department present.

The Acting Chairman: Gentlemen, we have a motion that we adjourn. All in favour say aye? Contrary.

Senator Smith: What is the show of hands, Mr. Chairman?

Senator Phillips: The motion was put; there were no nays. It does not require a show of hands.

The Acting Chairman: I did not hear any nays. Had there been any nays I could have asked for a show of hands.

Senator Smith: It is only five minutes; it is that I object to the principle of the thing.

Senator Phillips: I also object to the principle.

(Short adjournment to await arrival of representatives of the Department of Veterans Affairs).

The Acting Chairman: Honourable senators, we have present Mr. Reynolds, the chief legal adviser to the department, and also Mr. Anderson, the President of the Canadian Pension Commission. Do you think we should start now or we should wait for the deputy minister?

Senator Lang: Let us proceed.

Senator White: Mr. Chairman, before we start I should like to have one matter cleared up. I should like to have somebody explain the urgency that was mentioned in the Senate by Senator Martin and Senator Smith on two occasions. I should like to hear someone from the department explain why there is this urgency and why the bill has to have royal assent today. I think that should be our first item of business.

The Acting Chairman: Can the legal adviser explain this?

Mr. P. Reynolds, Chief Legal Adviser, Department of Veterans Affairs: I think there are really two very good reasons for the urgency. One is that the bill establishes and provides for a pension to the survivors of prisoners-of-war camps in Japan, and their pensions will not be payable until the bill is passed and becomes effective. The second reason is the exceptional incapacity allowance. This is a completely new concept that is introduced by this bill, and this also will not be payable until the bill becomes effective. I would say those are the two main reasons.

Another very excellent reason is that the Canadian Pension Commission has suspended the operation of appeal boards pending the passage of this bill, and the longer that is delayed the more of a build-up and backlog will develop.

Senator Smith: How many cases would be involved in the appeal board delay? Have you any idea?

Mr. Reynolds: Perhaps Mr. Anderson could give you a better idea of that.

Mr. T. D. Anderson, President, Canadian Pension Commission: It would be about 850.

Senator Phillips: What is the average length of time a veteran waits for the appeal board?

Mr. Anderson: It depends on the length of time it takes to prepare the case. It has to be dealt with first of all by the veterans bureau, who prepare a summary of evidence, and dig up all the necessary evidence in support of the claim. This could take up to a year or more sometimes. On the other hand, some of them are very easily prepared; they are available fairly quickly, and we sometimes get them through in as short a time as a month or six weeks.

Senator Phillips: After waiting a year it is rather difficult to imagine that the delay from Thursday to Tuesday will be a very heavy burden.

Senator White: Mr. Chairman, I should like to point to what the witness said about the pensions for Japanese prisoners-of-war. The provisions of this bill do not

become effective until April of this year. No money is provided under this bill to pay pensions, so the money will have to come from the first supplementary estimates in April, on account of the new fiscal year, and I presume they will in the natural course be paid at the end of April. As for the administrative work in preparing what has to be done in respect of these Japanese prisoners-of-war, finding out where they are and all the other details, I do not see why this cannot be done; it should be done and be under process right now whether or not this bill is passed. I do not see any sense or reason in that part of the argument.

The supplementary allowances cannot be paid until April, and there will have to be provision in the Estimates for the money to be passed before they can be paid. As Senator Phillips pointed out, I cannot see why an adjournment from Tuesday to Thursday, or from Thursday until next week, will hold up the appeal board or delay in the slightest degree the payment of any extra pensions to Japanese prisoners-of-war or any of these special allowances. I further say that if the administrative staff of the pension board has not got this work under way, and well under way, at the present time, they need a big shake-up.

Mr. Reynolds: With regard to April 1, it was always my understanding that these pensions would be paid from the time the bill was passed. I may be wrong, but I thought provision had been made in the Estimates to the commission to pay these allowances as soon as the bill was passed.

Mr. Anderson: That is right, there has been.

Mr. Reynolds: April 1, therefore, has nothing to do with it.

Senator White: It was the statement of the minister in the house, that April 1 was the date for that and the war veterans allowance.

Mr. Reynolds: No. I think he was talking about the increase in the basic rate for pension and for veterans allowance. He was not referring to the content of this bill.

Senator Smith: Mr. Reynolds, you started to say something about when these pension benefits would be payable to Hong Kong veterans and Senator White asked another question. Would you continue with that so that I understand it more clearly.

Mr. Reynolds: It was my understanding that the benefits to Hong Kong veterans and the exceptional incapacity would be paid from the minute this bill receives royal assent.

Senator Smith: That was my understanding.

Senator Phillips: How is that covered in the bill? It is my interpretation of the bill that it specifies April 1.

Mr. Reynolds: I do not think there is anything in the bill about April 1.

Senator White: Where does the witness get his authority for saying the pensions and benefits will be paid from the date of the passing of the bill? What is the authority for that statement?

Mr. Reynolds: The bill itself, sir.

Senator White: The bill?

Mr. Reynolds: Yes.

Senator Phillips: In what clause, Mr. Reynolds?

Mr. Reynolds: The clause providing for benefits. It provides that they be paid, so I would interpret that as meaning they will be paid from the time the bill becomes law.

Senator White: Then would the witness explain where the money is coming from? There is nothing in the Estimates. If there is something to be paid in the last month of the fiscal year, there is no money in the Estimates to pay it.

Mr. Reynolds: I will ask Mr. Anderson to reply to that, if I may.

Mr. Anderson: Mr. Chairman, there is sufficient money in our large vote, the vote from which the pensions are paid, to cover this expense. It is not a matter of millions of dollars. It is a reasonably modest amount. There are only just over 300 people involved. In many cases it is a question of bringing the rates up to 50 per cent, and the increase may only be from 35 per cent or 40 per cent. That is all this amounts to. We have sufficient money in our pension vote right now to pay this immediately the bill receives royal assent. As a matter of fact, I think honourable senators will be interested to know that they are all ready to be paid. It was suggested a minute ago that if we did not have it ready we should have. I say we have.

Senator Phillips: I take it, then, Mr. Anderson, that you as a member of the Canadian Pension Commission have not been fully distributing the amount of money voted by Parliament. Is that correct? Do you always have so much remaining over?

Mr. Anderson: Yes, there generally is a small surplus each year in the actual pension vote. In any case, the Pension Act, as you know, requires that whatever amount of pension is authorized by the Pension Commission must be paid.

Senator Phillips: I was particularly interested in your statement that you always had so much left over. I am wondering if it is part of the policy of the Commission to delay appeals, grants, and so on, to veterans in order that you will have so much of your vote left over.

Mr. Anderson: No, it is not.

The Acting Chairman: I gather that what is unspent reverts to Treasury at the end of the year.

Mr. Anderson: That is right, Mr. Chairman.

Senator Fournier (De Lanaudière): What is the amount of money concerned?

Mr. Anderson: \$220 million a year.

Senator Phillips: That is the complete budget?

Mr. Anderson: That is the complete pension budget.

Senator Fournier (De Lanaudière): Those people must be quite an age after so many years. The war has been over some time now. What is the average age of those people?

Mr. Anderson: The average age of World War II veterans is in the late fifties—55.

Senator Fournier (De Lanaudière): Not more than that?

Senator Phillips: We are still young.

Senator Fournier (De Lanaudière): You are younger; I am a little older.

Senator Lang: Could we proceed with the witness now?

The Acting Chairman: I am wondering whether you are waiting for an opening statement from the deputy minister or whether Mr. Reynolds can make the opening statement. I understand the deputy minister is on his way. I am in your hands.

Senator Phillips: Has anyone any idea how long it would take the deputy minister to arrive?

The Acting Chairman: He should be here soon.

Senator Phillips: I am sure the deputy minister has prepared an opening statement, and I suggest that we wait.

Senator Smith: Oh, come on. Mr. Chairman, this is not working out to my satisfaction. I do not want to have my own way around here...

Senator Phillips: That is news to me!

Senator Smith: On a point of order—and I do not think any other individual should run the committee to suit his own personal objectives. We would be very glad to have the deputy minister, and, in fact, the minister himself, but I think these witnesses from the department are experienced men and are capable and can answer any questions we have to put to them, to our satisfaction, in general. If that is not so, by the time our dissatisfaction grows the deputy minister will be here and he will do his best to answer those questions. I do not think we should have any further delays of this kind.

The Acting Chairman: I am not quite clear what you are suggesting. I understood Senator Lang's suggestion was that we proceed with the brief from the Veterans' Organizations.

Senator Lang: That is right.

The Acting Chairman: Our problem is solved: here is the deputy minister.

Senator Phillips: You called for further questions, Mr. Chairman, while we were waiting for the deputy minister to arrive and get prepared. May I ask how this bill is affected by the ruling of Mr. Speaker Lamoureux of the other house? It is my understanding that he ruled some time last evening that the vote in the supplementary Estimates was not proper and that it was out of order. How does this affect it?

Senator Smith: Mr. Chairman, I suggest, on this point of order—I suppose it is—that what the House of Commons does has nothing to do with the procedures of this committee. We should proceed to discuss this bill and hear all sides of it and come to a conclusion, without reference to what Mr. Speaker Lamoureux's decision may or may not have been.

Senator Phillips: I disagree entirely.

Senator Smith: We will meet that problem if and when it comes before us.

The Acting Chairman: I do not think it is fair to expect the witnesses to answer questions on the Speaker's ruling.

Senator Phillips: There is nothing in the supplementary Estimates now for Veterans Affairs and I asked if this affected that bill.

Senator Smith: That is your statement. That is not any statement given to the Chairman.

The Acting Chairman: I think the deputy minister can probably say.

Mr. Hodgson, we welcome you. We have been waiting for you, so we are a little behind. Have you an opening statement to make on this bill?

Mr. J. S. Hodgson, Deputy Minister, Department of Veterans Affairs: No, sir, I do not have a prepared statement. The committee will, of course, be aware that this bill represents the end of a long process that has gone on for about five years, which began with the appointment of the Woods Committee, which made 148 different recommendations affecting the pension scheme. The Woods Committee made its report in 1968. The Government then considered the report and issued a White Paper on the subject. Then, after further discussion between those directly affected, the bill was in due course prepared, and the bill does give effect to the great majority of the recommendations of the Woods Report.

The Acting Chairman: Thank you. Any questions?

Senator White: Perhaps the deputy minister could give us further information, Mr. Chairman. Mr. Deputy Minister, when do you say that this bill comes into effect?

Mr. Hodgson: This bill will come into effect when it receives royal assent.

Senator Fournier (De Lanaudière): That is normal.

Mr. Hodgson: Yes, it is. There may have been some confusion with the question of basic rights of pensions and basic rates of war veterans' allowances.

My minister announced on December 2 that the Government proposed to increase basic rates under both plans as of April 1, but this legislation has no direct bearing on that matter at all.

The Acting Chairman: Does that answer your question?

Senator White: Yes.

The Acting Chairman: Are there any more questions? Shall we proceed with the other witnesses, then?

Hon. Senators: Agreed.

The Acting Chairman: I presume you are going to sit in and listen to the brief of the Veterans' Organizations, Mr. Hodgson?

Mr. Hodgson: Yes, Mr. Chairman.

The Acting Chairman: I will ask Mr. Chadderton and Mr. Bert Hanmer to come forward, please. Would you introduce your staff to the members of the committee?

Mr. Chadderton: Mr. Chairman, I am appearing this morning on behalf of The National Veterans' Organizations of Canada. They are listed on the front page of the brief which we will present to you. They represent all of the nationally chartered veterans' organizations. I have with me, on my immediate right, Mr. Bert Hanmer, a service officer, the Dominion Command of the Legion; also Mr. Ed. Slater and Mr. K. J. Dunphy, service officers with the Dominion Command of the Legion.

Shall I proceed, Mr. Chairman?

The Acting Chairman: Yes. I presume you wish to deal with this brief section by section. I understand you are going to take turns in reading it, and we will deal with one section at a time, and then pass on to the next. Is that agreeable?

Hon. Senators: Agreed.

Mr. Chadderton: May I proceed, Mr. Chairman, by reading a letter into the record? It is addressed to:

The Honourable Maurice Lamontagne, P.C., M. Sc.,
Chairman,

The Senator Committee on Health, Welfare and
Science,

The Senate,
Ottawa, Ontario.

Dear Senator Lamontagne:

This has further reference to our telegram to the Director of Committees of the Senate, of yesterday's date. We appreciate very much the opportunity to make this submission to your Committee.

Our group learned early yesterday of the possibility that Bill C-203—An Act to Amend the Pension Act and the Civilian War Pensions and Allowances Act—might be referred to your Senate Committee. We had just sufficient time to write our submission in English but, unfortunately, we have been unable to prepare a French text. We do regret our inability, because of the short notice, to make our submission in both official languages.

Our brief has been divided into a number of specific areas. We hope your Committee will permit us to stop at the end of each section, to provide further explanation as may be necessary, or to answer questions.

Yours sincerely,

H. C. Chadderton,

(for the National Veterans' Organizations of Canada.)

May I also add a few comments in the preliminary discussion before the committee? I wish to assure honourable senators that there was no distribution of this brief ahead of time. The first time that any member of this committee saw the brief was when it was placed on his desk when he entered the room this morning.

Concerning the question of delay I readily admit that veterans' organizations are most interested in having this bill given royal assent as quickly as possible and we do use in our brief the words "without undue delay". But I think it is incumbent upon me to point out that, as the deputy minister has already said, this matter has been in process since September 1965. I do not want to be unpopular in making this statement, but the department had the Woods Report under survey for a year and a half before the White Paper came out, and our feeling is, Mr. Acting Chairman, that certainly a few more days will not matter that much. We still have reservations about the bill as it stands at present. We certainly appreciate the opportunity to have this bill reviewed by the Senate and the Senate committee.

Referring to the brief itself, it is both a privilege and an honour to appear before you on behalf of the 12 national veterans' organizations of Canada, to express our views relative to Bill C-203, an act to amend the Pension Act and the Civilian War Pensions and Allowances Act.

We consider this bill to be another milestone on the long road towards obtaining more effective pension legislation. The scope of the legislative changes in the amendment—the most extensive in half a century—reflect the sincere concern of the Government, and indeed of both the elected and appointed representatives of the people, for the proper indemnification of those who have suffered death or disability in military service for Canada.

It is a source of satisfaction to the national chartered veterans' organizations that the proposed changes meet most of the requirements that were set out in the Woods Report, and subsequently supported by the Standing Committee on Veterans Affairs of the House of Commons.

We believe that our views regarding the improvements in Bill C-203 are well known. Hence, there is no requirement to recapitulate herein the changes represented in the existing Bill C-203, with which we concur in full.

It is our desire, however, to place before your committee a number of observations in respect of certain areas wherein some revision would appear necessary. We trust it will be satisfactory if we furnish comment hereunder in respect of each such area.

I would now ask Mr. Hanmer to deal with the pension review board.

Mr. H. Hanmer, Service Officer, Dominion Command, Royal Canadian Legion: Regarding the Pension Review Board, Bill C-203, clauses 77 to 83, the national veterans' organizations welcome the proposal to establish a pension review board to adjudicate final appeals. We note with regret, however, that the proposed legislation differs substantially from the recommendation submitted by these organizations, and endorsed by the Standing Committee on Veterans Affairs of the House of Commons.

The main fault, as seen by the veteran's organization, is the presumed procedure under which applications would be dealt with at more or less formal hearings. Clause 80(1) provides that a quorum of three of the five members of the board will be required to hear appeals in respect of entitlement, and two members shall constitute a quorum for appeals on any other matter. Clause 82(2) provides that the applicant or his representative may make written submissions and may appear before the board to present argument. It would seem, from evidence given before the parliamentary committee, that the normal procedure will be a formal type hearing.

The veterans' organizations had proposed that, in the main, submissions to the review board would be dealt with on the basis of a review of the written record. This would have facilitated rapid processing which is essential if an appellate body of this type is to handle the large number of cases which presumably will be submitted to it.

It is necessary to restate the history of this review board. The Woods Committee, in its report tabled in the House of Commons in March of 1968, proposed the establishment of a pension appeal board, in the nature of a full-fledged appellate system complete with investigatory facilities, hearings, witnesses and appearances of both the applicant and his representative. The Government apparently rejected this system as being too expensive. In its place the White Paper on Veterans' Pensions, released in September of 1969, suggested that appeals be handled by an independent section of the Canadian Pension Commission.

The national veterans' organizations objected to this procedure, pointing to the necessity for an appeal system independent of the commission. We did recognize, however, the need to establish a procedure which would be both economical and practical. Accordingly, we proposed a pension review board.

Bill C-203 has adopted our proposal in name. We have no alternative but to point out, however, that we had envisaged a much more streamlined procedure.

We have seen from the outset, that the real danger in any new appellate system could be summed up in the word "congestion". To think otherwise would be to ignore the lessons of history.

There seems little value now, however, in conjecturing as to whether our proposal would have been superior to that established by Bill C-203. The national veterans' organizations are prepared to support the concept of the bill as it stands, but it is obvious that we must make it known that the new review board is not the one which was recommended by the veterans' organizations.

The main issue now concerns appointments. The Woods Commission was emphatic in stating that appointments to both the commission and the appellate body should be based on merit, with adequate representation from Canada's veterans. We believe that with men of good will, almost any system can be made to work, and we hope that the Government will make the appointments to the board with the interests of those disabled, and those bereaved by war, in mind.

The Acting Chairman: Are there any questions on this section?

Senator White: I should like to ask the deputy minister a question regarding the last paragraph at the top of page 4 concerning appointments to the commission and so on. Would the deputy minister tell us if there are any qualifications set out for an appointment?

Mr. Hodgson: Mr. Acting Chairman, the bill does not prescribe any particular qualifications for members of the pension review board. It does say that the appointments will be made by the Governor in Council. However, section 1A of the bill gives a general guideline as to the manner in which the whole pension matter is to be handled, which is with sympathy and understanding; and there is a further section in the bill dealing with benefit of doubt, which again suggests that one is not to take a too litigious or legalistic view. Therefore I presume that when appointments are made the appointing authority will give consideration to personal qualifications which would enable the person to fulfill this appointment.

The Acting Chairman: May I ask a question? In setting up the review board is it planned to reduce the regular Pension Commission, separate a number of commissioners from the present Pension Commission to form this review board?

Mr. Hodgson: The number of persons who might be appointed to the Pension Commission will remain unchanged. It is possible that some members of the pension review board might be persons who had been on the Canadian Pension Commission. The minister indicated at one of his appearances before the House of Commons committee that he thought there was virtue in having both continuity and change. Perhaps a minority might be former members of the Pension Commission.

Senator Inman: Would the Government consider any recommendations from the veterans' association?

Mr. Hodgson: The honourable senator will appreciate that I cannot speak on behalf of the Governor in Council, but it is not uncommon for people who have proposals to make to send them to the minister or to the Prime Minister, and I have no doubt that anything that is received is considered in the spirit in which it is sent. Perhaps I might ask the chairman of the Canadian Pension Commission to answer.

Mr. Anderson: There are 17 members at the moment; 12 full time and five *ad hoc*.

Senator Fournier (De Lanaudiere): I suppose they come from all parts of Canada?

Mr. Anderson: That is right.

Senator Fournier (De Lanaudiere): Who is the representative for the Province of Quebec?

Mr. Anderson: There are about four of them right now.

The Acting Chairman: And your pension commission will stay at the same strength; this bill does not reduce it?

Mr. Anderson: No.

Senator Fournier (De Lanaudiere): Do you have their names?

Mr. Anderson: Mr. Painchaud, Dr. Blier and Dr. Morin.

Senator Inman: Mr. Power?

Mr. Anderson: Mr. Power is assumed to be from Ottawa; he was here when we appointed him. Dr. Touchette was recently appointed, so there are five.

Senator Phillips: May I ask who are the representatives from the Atlantic provinces?

Mr. Anderson: There are two from the Province of Nova Scotia, Mr. Cameron and Dr. Thompson. At the moment there is no one from Prince Edward Island.

Senator Inman: Senator Phillips put the question I had in mind, but I will ask a supplementary; why is there not a representative from Prince Edward Island?

Mr. Anderson: There are two or three provinces from which there are no representatives at the moment. This varies. There is no one from British Columbia at the moment, either, for that matter. However, for a good many years there were two or three from British Columbia and none from other provinces. In other words, every province is not necessarily represented on the Commission; there is nothing in the act to require it.

Senator Fournier (De Lanaudiere): I think the act should require it.

Senator Inman: So do I.

Senator Phillips: How many are permanent and how many *ad hoc* members?

Mr. Anderson: Dr. Thompson is *ad hoc*; Mr. Cameron is permanent.

Senator Phillips: The Atlantic provinces then have one permanent representative?

Mr. Anderson: At the moment that is right.

Senator White: Can the president say how many of the members of the commission are veterans who actually served in a theatre of war and whether any members have not seen service of any nature?

Mr. Anderson: All except two have seen service in a theatre of war and only one has not seen service at all.

The Acting Chairman: We have our sponsor with us; Senator Lang, do you wish to ask questions?

Senator Quart: You have mentioned a Mr. Power; would that be Frank or Pen?

Mr. Anderson: It is Pen.

Senator Quart: Are there not two brothers on the Pension Commission?

Mr. Anderson: No, just one; Pen.

Senator Quart: The other is somewhere then?

Mr. Anderson: Yes, he is with the Department of National Defence.

The Acting Chairman: Mr. Hanmer, your principal objection to the Pension Review Board is that it will not work fast enough; is that it? What you had in mind in your recommendation was a review board that would review the evidence already given.

Mr. Hanmer: And do it quickly.

The Acting Chairman: And that is your principal complaint?

Mr. Hanmer: You will recall the problems that arose in connection with the board that existed in the early thirties. The veterans' organizations do not want to perpetuate that type of organization; they prefer to have something that will work and do the job as quickly as possible.

The Chairman: Have you anything to add?

Mr. Hodgson: Perhaps it would be useful if I read to the committee a portion of a statement which my minister made on this very point to the Standing Committee of the House of Commons on Veterans Affairs on January 15:

A third group of suggestions made in the House referred to the Pension Review Board. It was stated that hearings should be informal and not clogged by red tape and ground rules, that a quorum of three members should not be required, and that the formality might cause the Board to bog down. I fully share the view that there should not be unnecessary rules but here again there would appear to be a degree of misunderstanding. If members will examine the relevant sections of the Bill, they will find that most of the provisions relating to the Pen-

sion Review Board are enabling rather than restrictive in character.

On the matter of quorum, the government has followed the recommendation of the Woods Committee itself. Their report (Recommendation 14S) recommended that "On appeals involving entitlement the quorum of the Board shall be not less than three.

On all other matters the quorum shall be such number as the Board may decide." Section 80 of the Bill similarly provides for a quorum of three on entitlement or on a matter of interpretation, and two for other appeal hearings. I should emphasize that one single individual award could possibly represent an expenditure of more than \$100,000 over a number of years, and it is therefore not a decision to be taken casually. Furthermore, any decision on a particular case may become a precedent for others, perhaps for hundreds of others. Members of the Committee will also recognize that the Board has final responsibility for interpretation of the Act. For all these reasons it is important that the decisions of the Board be valid ones, and it is equally vital that decisions be consistent with one another. The quorum requirements recognize the significance of these matters.

The Acting Chairman: I gather that what you had in mind, Mr. Hanmer, was that if there was new evidence to be presented, then the case would be referred back to the entitlement committee, or this review board. As it is now you have two adjudicating boards, the entitlement board and the pension commission review board.

Mr. Hanmer: The final pension appeal board will rule not only on individual cases, of course, but on principles and establish principles where there is some divergence of opinion at the lower stages.

Mr. Chadderton: We find ourselves largely in agreement with the minister's statement, but we still say that no one really knows and until this new review board goes into operation and we have had some experience it is a matter of pure speculation.

Our feeling was, however, that although we did side with the Woods committee's proposal for a quorum on entitlement matters, it also should be noted that the Woods committee suggested that all other matters could be handled very expeditiously by one member of the review board. I point out to this committee that that recommendation was made by a member of the Court of Appeal of Saskatchewan, the honourable Mr. Justice Woods, who is quite familiar with legal matters. He certainly felt that legal boundaries would not be transgressed by leaving a decision of this magnitude in the hands of one man. That is quite often the procedure of the court, he told the committee.

The right of appearance is something which, quite frankly, has us worried. The bill contains a discretion and the right of appearance will, in effect, be at the discretion of the advocate. Mr. Don Ward, the chief pensions advocate, said in evidence before the Woods com-

mittee that it was his intention to make an appearance in every case. Consequently, we feel that there is a great danger that a review board with only five members, three of whom must sit on every entitlement case, will grind almost to a halt if there is to be a formal appearance in every case. We have pointed out in our brief that we feel and admit this is merely a matter of speculation; no one really knows the answer. Our proposal is: let us get on with it as it stands now, making our points as we go along, and see what happens, but we only hope that if it does start to grind to a halt somebody will move pretty quickly to change the rules of procedure before that Pension Review Board.

Senator Inman: I do not agree with women's lib, and I am not a feminist, but I was wondering if any consideration was given to appointing a woman to this board? We have many women veterans. This is one case where women are making a fight to be appointed. Consideration might be given to it.

Senator Quart: And let it be a woman veteran, not women's lib.

Senator Fournier (De Lanaudière): I second that.

Mr. Anderson: Mr. Chairman, you will recall, perhaps, that the representatives of the Nursing Sisters who appeared before the Standing Committee on Veterans Affairs last year recommended that a lady veteran be appointed to the commission. It has been considered. Actually, these appointments are made by Order in Council and it is not a question of the commission's making any decision in this regard; it is a matter for the federal Government. But up to this point no lady member has been appointed.

Senator Quart: Maybe now that the Prime Minister is married he will be better disposed towards it.

Senator Fournier (De Lanaudière): He committed himself in a speech a couple of days before his marriage, and that would fit exactly with his ideas. It would be an acknowledgement of the value of Madame Trudeau.

Senator Quart: Is there any particular reason for having a civilian on this Pension Review Board with all the other veterans? I presume they are overseas veterans. Are they?

Mr. Anderson: As I said before, they are all who have service in a theatre of war, except two.

Senator Quart: There is one civilian. Is there any particular reason for that?

Mr. Anderson: Not that I am aware of, Mr. Chairman, no.

Senator Inman: I think that is a very good idea, because veterans, no doubt, are a little biased and perhaps a person who has not had service might have some unbiased views.

The Acting Chairman: Are there any more questions?

Senator Lang: I wanted to ask a question arising out of Mr. Chadderton's concern over the remark concerning the Pension Advocate that he would make an appearance in every case. I know what the practice has been of the Public Trustee's office in Ontario, that it takes the form of a remuneration, and perhaps I could direct this question to the deputy minister. Is the Pension Advocate a salaried employee or does his remuneration depend on the number of appearances he may make before the board?

Mr. Hodgson: He is a salaried employee. At the present time he is a person appointed under the Public Service Employment Act, but it is proposed in the bill that there will be an organizational change whereby the Pension Advocate's organization will be set up as a separate bureau, and he will be appointed by Order in Council, but on a salaried basis.

Senator Phillips: Mr. Chadderton, your remarks about the review board sort of struck me rather impressively because in my remarks in the Senate—and I am not going to ask you to read them or bore you with them—I described the review board as having too much of a "supreme court" attitude. I was particularly concerned by the fact that the veteran cannot make an oral submission before this board. Am I being unduly concerned, or do you people share that concern?

Mr. Chadderton: I would have to answer that question this way, Senator Phillips: We would not really visualize too many individual applicants making a personal appearance on their own behalf. The reason is, firstly, that it is intended that the review board will sit only in Ottawa; and, secondly, I think there is a very important point here, that under the new Bill C-203 the question of personal appearance will be looked after, in our view, pretty well by what are called entitlement boards. Within the commission there will be set up a system of entitlement boards, similar to the present appeal boards of the commission, where travelling boards will go into all the areas of Canada, and there the advocate and the man will have an opportunity, his day in court, to come and tell his whole story. It will all be on the record and it will all be available. We felt that we were balancing two principles. Sure, we would like to see the veteran have due process. It would be wonderful to see that he has every last opportunity to win his pension case. But, balance against that is the necessity, in our view, for speed. Essentially this has to be a very quick system, as far as we are concerned. We have said that he has already had his day in court at the entitlement board, so let us have the review board almost entirely a matter of review where somebody can sit down and go over all the evidence and written submissions and say, yes or no, whether the pension should be granted, or, alternatively, it should go back to the commission for another look at it. We do not blame Mr. Ward for saying that he would insist on a right of appearance; he is only doing his job. But we feel that the legislation that allows that, in effect invites Mr. Ward, and almost compels him, to go and make a formal presentation in every case.

We see as many as maybe 15,000 cases in front of this review board within three or four years. With three people as a required quorum, sheer mathematics indicates that it is just going to grind to a halt. They can handle probably five cases a day, and will sit five days a week at the maximum. So we have our fears on that score.

Senator Phillips: When you quote figures, I can understand your concern.

The Acting Chairman: I apologize to the committee. I do not think that when Mr. Hodgson made his opening statement I asked him to introduce his staff. For the record, maybe other senators will want to address questions to them, so would you please introduce your staff?

Mr. Hodgson: Certainly, Mr. Chairman. I would point out that some of those present are not members of the staff of the department. Mr. Anderson, President of the Canadian Pension Commission, of course reports directly to the minister. Dr. Richardson is the Chief Medical Adviser of the Pension Commission. Mr. Kendall is the special assistant to the minister. Mr. Reynolds, who is in the Department of Justice, is Legal Adviser to the Department of Veterans Affairs.

The Acting Chairman: Shall we proceed with the next section, "the benefit of the doubt" clause?

Mr. Chadderton: Mr. Chairman, this next section deals with "the benefit of the doubt" clause. Before reading it I would point out to the members of this committee that I have in my hand a 65-page history of "the benefit of the doubt" which I had the privilege to prepare when I was Secretary of the Woods Committee, and this history is available to anyone who is interested in going into the background of it. I make that statement only to point out that this is a time-honoured sort of concept in pension legislation, and we make no apologies for dealing with it even at this late date in the study of this bill.

Clause 87 of Bill C-203 provides a new "benefit of the doubt" provision which would require the pension adjudicators to:

- (a) draw every reasonable inference in favour of the applicant;
- (b) accept in the applicant's favour all credible evidence that is not contradicted; and
- (c) in weighting such evidence, resolve any doubt in the applicant's favour.

The existing benefit of doubt, under section 70 of the Pension Act, provides that the adjudicating authority must give the benefit of the doubt to the applicant, in that all reasonable inferences and presumptions will be drawn in his favour, and that it is not necessary for him to adduce conclusive proof of his claim.

In our view, the new clause is no stronger than the existing section 70 and may be less advantageous to the applicant. The existing clause states that he does not require "conclusive proof" of his claim; the new provi-

sion is that he will require evidence that is not contradicted.

In our opinion, the recommendation of the Woods Committee, in respect of the benefit of the doubt, provided the ultimate solution of the wording of this contentious clause. It attacked the question of "preponderance" head-on, stating that this normal requirement in civil law would not be applied as a test under the Pension Act. The adoption of the Woods recommendation would have permitted the adjudicating authority to rule in favour of the claim, without requiring the applicant to establish a "preponderance" in his favour, so long as there was doubt.

The Chief Pensions Advocate, speaking as the representative of the Minister of Veterans Affairs, advised the Standing Committee on Veterans Affairs at its session on September 17th 1969, as follows:

The recommendation is accepted almost completely except for the insertion of one word. The word 'credible' should be added before the word 'evidence' in the Woods Committee recommendation. Otherwise the recommendation is completely accepted.

I trust it is clear we are referring here to a statement made by the Chief Pensions Advocate in which he told the Commons committee that the Woods recommendation was accepted.

It is of interest as well that the Standing Committee on Veterans Affairs, after many months' study, endorsed the recommendation of the Woods Committee.

It is a matter of some importance to the national veterans' organizations of Canada that, despite the previous acceptance by the minister, together with the endorsement of the Standing Committee on Veterans Affairs, the essential feature of the "benefit of the doubt" proposal developed by the Woods Committee was ignored in the drafting of a new benefit of doubt clause in Bill C-203. To repeat, that feature dealt with the question of "preponderance". The criminal law requirement concerning benefit of the doubt could not, of course, apply in pension adjudication. Essentially it is a matter of civil law, where the decision rests on "preponderance".

If the veteran is truly to be given a concession which is greater than might normally apply, it would have to be in this specific area. The justification for such concession has been recognized from the inception of this clause in our pension legislation in 1930; that is, the fact that conditions of service, lack of essential information and other compelling factors, make it more difficult for the veteran to prove his claim than is the case in ordinary civil law.

The national veterans' organizations of Canada consider that the wording of the Woods Committee recommendation more adequately reflects the intent of Canada's legislators, in respect of the need to create an effective climate for adjudication of pension claims. We suggest, therefore, that clause 87 of Bill C-203 should be amended to reflect the Woods Committee recommendation.

The Acting Chairman: Are there any questions?

Senator Smith: I wonder if this is an appropriate time to have the views of the department officials on this particular point?

Mr. Hodgson: This is a highly technical matter. Perhaps I might call upon Mr. Reynolds of the Department of Justice, who is an expert on these matters.

Mr. Reynolds: It is the view of the department, and I share that view, that the proposed clause does bring about a considerable improvement over the old clause. It provides that all reasonable presumptions or inferences must be drawn from the evidence adduced. It also provides that any fact that a veteran has to prove and establish his claim, if he produces any credible evidence, that is any evidence at all, that any reasonable person can believe, any reasonable evidence, then he has established that part of his case.

It goes further to say that if, after weighing all the evidence, after reasonable inferences have been drawn from the evidence adduced, and after the credible evidence has been accepted in proof, there is any doubt left after that, that doubt must be resolved in the applicant's favour.

This goes just about as far as any legislation could in providing a favourable climate for having a favourable decision reached.

The Woods Commission recommended that even though the preponderance of evidence was against him, the claim could still be allowed. I think honourable senators would agree that that is going a bit further than the Government could be expected to go in spending taxpayers funds. Even if the weight of evidence is against an applicant's claim they can still grant it.

This section goes as far as to say if there is any evidence at all, and if reasonable inference from that evidence has been drawn in favour of the applicant; and if there is any doubt left at all in the mind of the adjudicating body it will be resolved in favour of the applicant and he will be allowed a pension.

The Acting Chairman: Would you go a little further and say how the benefit of doubt differs from the present act?

Mr. Reynolds: The present section does not require the commission to accept as proven any fact that any credible evidence submitted by the applicant does not contradict. I think that is an important part of the clause. If the applicant himself appears before the entitlement board and gives evidence that he had bronchitis in Italy in 1944 and that the bronchitis had bothered him ever since, it would appear to me, on the basis of evidence of that kind, that the Pension Commission should and would grant entitlement.

Senator White: May I ask Mr. Reynolds if he would comment further on section B? He mentioned something about credible evidence, and then says "if that is not contradicted." If it is contradicted does it mean that that evidence is not accepted?

Mr. Reynolds: The use of the word "evidence" in the past practice of the commission—and presumably the intention is the same in this act—does not mean evidence that would be accepted in a court. The word "evidence" is used very loosely, to include any oral or written statement that is relevant to the applicant's claim. If evidence of that kind is produced which does appear to be reasonable, possible and consistent with the records, then that would be credible evidence.

"Contradicted" means that there is evidence of some other kind statement or oral evidence, which casts doubt on the credibility of the evidence. It might be evidence of a doctor saying that it was quite impossible for a particular disease to have developed on a particular occasion as alleged by the applicant. I would say that if there were evidence of that kind then the evidence given by the applicant would have been contradicted. Does that answer the honourable senator's question?

Senator White: Yes, thank you.

Senator Phillips: Mr. Acting Chairman, personally I am very much concerned about the use of the word "evidence". Perhaps legal people understand its use far better than I do. When I hear the word "evidence" I think of people sitting on review boards, and so on, deciding whether a certain statement constitutes evidence.

I had suggested that the word "submission" would be a far better word than "evidence". May I hear from Mr. Reynolds on the legal aspect of using the word "submission" as opposed to the word "evidence"?

Mr. Reynolds: As I mentioned, Mr. Acting Chairman, the use of the word "evidence" here does not remotely resemble the word "evidence" as considered by a court of law, where there are very strict rules of evidence, things like hearsay and written statements, and a number of other things that are not admissible in a court of law.

In tribunals of the type we are dealing with here, and, in fact, in most administrative tribunals, any statement, written or oral, that is relevant to a claim is accepted as evidence. It does not need to comply with the rules of evidence as applied by a court. Letters written by the applicant, letters written by witnesses to the applicant or the commission or the Pension Board are all accepted as evidence. So, used very, very broadly, it includes almost anything that is relevant to the claim. It will not go as far as a submission, because a submission is something made on behalf of someone.

A letter to the commission from an applicant submitting his own claim and containing factual material in support of his contention that he had been injured in France in 1944 would be evidence in his submission. Evidence is used so broadly that it includes almost anything in this context.

Senator Phillips: My question, to be more specific, is what is the legal connotation of substituting the word "submission" for "evidence" in section 87 (b)?

Mr. Reynolds: Submission need not be factual, but this must. A person can submit that black is white, but I do

not think submission is intended here. It means something that is factual, or facts. "Submit any credible facts in support of evidence", if you like, but I think it must be factual, not just a submission.

Senator Phillips: The word factual conveys the meaning of proof; it may not be factual unless it is proven. I am still greatly concerned that this section, by the use of the word factual, in essence proof, still puts the burden of proof back on the veteran.

Mr. Reynolds: It does cast the burden on him of establishing a prima facie case; there is no doubt about that. He must produce evidence to say that he served and that he had symptoms of some illness during his service which developed into the disease for which he is now claiming a pension. He must go that far.

Senator Phillips: I wish I had not asked that question, Mr. Reynolds; you leave me even more concerned with the section than I was before.

Senator White: Mr. Reynolds, do you think that the interpretation of this clause, benefit of any doubts, will have an effect on the interpretation of the next clause, presumption of physical fitness on enlistment, which is contained at page 10 of the bill?

Mr. Reynolds: They should be read together when the facts are applicable.

Senator White: At page 10 where physical fitness appears, the word "presumed" is used. If there is a doubt, I presume it is to be in favour of the veteran?

Mr. Reynolds: Yes, it is a presumption that the man's condition is as shown on his enlistment medical documents.

The Acting Chairman: I think, Senator White, we are coming to that under another section; perhaps we could stay with the benefit of doubt.

Under the law as it stands, the burden of proof remains with the veteran. It is my understanding that the effect of the Woods committee report and recommendation would change the situation so that the veteran must submit evidence on which to base a claim but, the burden of proof would then shift to the pension commission. Is that embodied in the present legislation?

Mr. Reynolds: I would think so. If he submits evidence which is uncontradicted, then the first part of the subsection would apply and he would be entitled to pension. The onus would be cast on the commission to find evidence to rebut that which he has submitted.

The Acting Chairman: Let us consider the case of a veteran who has had a leg amputated above the knee. In that condition he will not be too mobile and will not be able to exercise. He will probably not exert himself too much and become overweight in time, resulting in a coronary. Would he receive the benefit of doubt when submitting that the coronary was related to his war disability?

Mr. Reynolds: Not without further evidence. He would have to produce evidence from a doctor to say, first of all, that the amputation of his leg caused him to become overweight and that condition caused his coronary.

Senator Smith: You refer to medical evidence?

Mr. Reynolds: Yes.

Senator Inman: Does this board always sit in Ottawa? Do veterans ever appear personally before it?

Mr. Chadderton: Veterans appear before the appeal boards in various centres throughout Canada.

Senator Phillips: Perhaps Mr. Anderson could indicate the number of cases presently under appeal involving the benefit of doubt clause?

Mr. Anderson: Mr. Chairman, the benefit of the doubt is a section of the act, so we must apply it to every case we deal with.

Senator Phillips: You apply the whole act, Mr. Anderson, so that really is not the point I wish to make. I would like to know the number of cases. You gave us a figure of 8,000 or 9,000 cases waiting for appeal. How many of them invoke the benefit of doubt clause as part of their appeal?

Mr. Anderson: It is difficult to answer that because they do not actually say anything in the summary of evidence or the information which is put before the commission with reference to the benefit of doubt section at that stage. It is a question of the commission in adjudicating on all claims keeping in mind this particular section and applying it where it is obviously appropriate.

For example, a man with a leg shot off above the knee in the war does not need benefit of doubt; he has a disability incurred by service and receives a pension. Where it is a claim for disability incurred during previous service, there must be evidence.

The commission has not yet considered all these cases, so I do not even know what the claims are and I will not know before they come before us.

Senator Phillips: Perhaps the witnesses would like to comment?

Mr. Chadderton: Mr. Chairman, to come directly to the point raised by Senator Phillips: it is my interpretation that in submitting a case for consideration by the commission the advocate would not necessarily ask for a ruling as to whether a pension could be granted under section 70 of the Pension Act, benefit of doubt. However, in the commission's decision it is usually set out, if the commission has to say no, that full consideration was given to section 70 and notwithstanding this the commission could not find in favour of the veteran.

In view of that I do not believe it would be possible to ascertain through our records how many cases the commission considers at any one time for pension under section 70. We just assume that it is applied in every instance.

I would like to comment on a number of points that have been made in discussion of section 87(b) of Bill C-203. This is the clause to which Brigadier Reynolds was referring. It says:

...any credible evidence submitted by him that is not contradicted.

My contention is that the Canadian Pension Commission right now certainly takes that into account. If I thought for a moment that the Pension Commission was not giving full weight to credible evidence that has not been contradicted, speaking for veterans, we would be up in arms. So I do not really think that that particular subsection is adding anything to the present situation. I hate to bring up the history of it, but I would go back to the original section 70 and just point out to your committee what it says:

...it is not necessary for him to adduce conclusive proof of his right to the pension...

It goes on to say that the:

...the body adjudicating on the claim shall draw from all the circumstances of the case, the evidence adduced and medical opinions, all reasonable inferences and presumptions in favour of the applicant.

It goes on to say that he shall have the benefit of the doubt on those grounds.

I am no lawyer; I do not profess to know the law, but I do know the history of the "the benefit of the doubt" section. It is certainly my contention, and the contention of the veterans' organizations, that "the benefit of the doubt" as submitted in Bill C-203 in 1971, 41 years later, really does no more than the original benefit of the doubt. To support my contention I simply refer you to some 30 pages of comment written by the Woods Committee which did consist of three legal minds, and very good minds, in my view. Their feeling was that "the benefit of the doubt" is merely words. You can shuffle them—and they have been shuffled seven times in the history of Parliament—any way you like, but they are merely words until you attack the question of preponderance, because in civil law that is what it is all about. If you are really going to give the veteran a break—because of his service and because of the difficulty of getting records, and everything—in the civil law arena you have to attack the preponderance, and what the Woods Committee suggested was that it was not necessary for you to have a preponderance of evidence, if there was doubt. I come back to something that Brigadier Reynolds said. I do not think the Woods Committee intended a giveaway, but their theory was that if you put it on the scale and it went against the veteran and there was doubt, you had to say to yourself, "There is sufficient doubt that if we really knew about the missing facts they would tip it in his favour." Naturally, the Woods Committee did not say how much doubt, because what is the magic in figures, but they, the Woods Committee, said that is the only way, after 2½ years study that you could bring about a more effective "benefit of the doubt".

I am sure that Mr. Justice Woods and his colleagues would back up the next statement I would like to make, and they would say right now that unless you can attack

the preponderance element, go ahead and reshuffle it, but you are really not giving the veteran any more in your new "benefit of the doubt" than they had back in 1930. I remind you that it was reshuffled seven times and, in our opinion, nothing ever came out of it, because it was always up to the Commission to interpret it. We feel very keenly on the side of the Commission. They have tried to interpret the present "benefit of the doubt" to the best of their ability, but they are men of conscience and they sit down and look at a case and they say, "There is just too much doubt here. We take a look at it and we say that the preponderance is against the veteran and, in all conscience, it is taxpayers' money and we cannot put it through." But if somebody said, "Okay, remove the element of preponderance. Now could you put it through?" If they could, then they would have done something.

The Acting Chairman: Mr. Chadderton, take clause 1A, under the title of "Construction." Does that enlarge the scope for giving the benefit of the doubt, in your opinion?

Mr. Chadderton: No, I do not think it does. Mind you, we are very pleased to see the new sort of intent spelled out in a section of the act, and I might also say that I am sure the Woods Committee made that recommendation because they said you have to draw a distinction between "the benefit of the doubt" and the "intent". So they said, "Have a new intent, and say that the intent shall be to do the most you can for the veteran."

Coming back to "the benefit of the doubt", what it really was was an extra weight which you could put on the scales, and somebody had to sit down and make a decision. You could almost visually see it as being an extra weight, and when it was just slightly against the veteran somebody could pick up that "benefit of the doubt" weight and put it on the scale and say, "All right, our conscience is clear. He should have it because of the benefit of the doubt." But it was something that was applied only to the adjudication process. The intent is something that you carry right throughout. The reason that was done was so many people would walk into, let us say, an office of the Canadian Pension Commission and say, "I broke my leg in 1941 when I was serving." The file was silent and there was no evidence, and the veteran said, "There is doubt. You have to give me a pension". You just cannot apply the benefit of the doubt, as the Woods Committee saw it, to what a clerk over the counter may do, but the intent of the act, yes, you can say that if he is involved in pension administration he is required in section 1A of the act now to operate under that intent, to do everything he possibly can to assist the veteran. We like it. We think it is a great improvement but we do not think it is going to affect the benefit of the doubt in the adjudication process.

The Acting Chairman: Mr. Hanmer, would you care to add any further comment?

Mr. Hanmer: No, I have nothing further to add, Mr. Chairman.

Senator Inman: I am interested in what could be done in a case like this. As we know, a lot of the boys at the

end of the war wanted to get out of the service as fast as they could. I know of a case where a chap had a very bad back injury and he was in a plaster cast on two occasions. There was a question whether the military or service doctors did not want to operate because they would not take a chance to have him end up crippled for life. Anyway, when he came out of the service he said that he came out perfectly all right, with nothing wrong with him. Some years after he had to have his back operated on at his own expense. In that case he applied for a pension. I think that he got about \$5 a month. But when he came out he had said that he was feeling perfectly all right, although it happened that he was not all right. When he came out they gave him a bottle of a thousand Aspirins to relieve the pain. What would you do in a case of that kind?

The Acting Chairman: Are there any more questions?

Senator Phillips: Does not Senator Inman get an answer?

Mr. Chadderton: I would say from the veteran's viewpoint—and perhaps Mr. Slater should embellish this a little—what would happen is, we would advise him to go through the normal procedures of the commission. Then, when he has exhausted his rights there, he can appeal either to the Legion or some other veterans' organization to handle an appeal in front of the Appeal Board; or he can go to the Veterans' Advocate Branch of the department. Once it has gone through an appeal board, then you go on the hunt for more evidence. You go on the hunt to try to indicate that somewhere in the service this did happen to him. You write to people, the names of whom he will give you, people with whom he served, and that type of thing. And you will go out to attempt to get medical opinions from doctors now, and you might try to relate the fact that it occurred during his service.

I think you have put your finger on what I would call a classic pension case, and it requires a lot of work on the part of many people. I would like to say to the committee that although the veterans' organizations work hard on these cases, so does the Pensions Advocates' Branch, and so does the Commission itself. If they can dig the evidence up somewhere along the line he would have a good chance of getting a pension, but if his files are completely silent on it and he in effect discharged himself and said, "I am all right" it makes it very difficult.

Senator Inman: He did.

The Acting Chairman: I would like to ask on this "benefit of the doubt" matter, how does the benefit of the doubt apply to the adjudicating commissioner? I understand every case is adjudicated by three members of the Pension Commission. Do they adjudicate each case? Does each commissioner make his separate and independent adjudication, or does he do it in conjunction with the other two?

Mr. Anderson: It depends, Mr. Chairman, on what stage the claim is at at the time. For instance, under the old legislation they could come forward for an initial

ruling which was dealt with by the commissioners. It would be dealt with strictly on the basis of written evidence. If the claim was rejected at the initial hearing by an initial decision, then of course he could come back for a renewal hearing on the production of new evidence. He can come back, and it is almost automatic. But from then on if he wants further renewal hearings he must produce additional evidence in support of his claim, before we grant it. In point of fact we seldom reject them at any level. They can come back as often as they like for renewal and it can be renewed.

Under the old legislation a serviceman, a veteran, had a first hearing and a second hearing and then he had to go to appeal from there. These claims are dealt with in a variety of ways. If it is a perfectly straightforward case and there is no argument about it, one man will write a federal decision and two or more will look it over and if they agree they will sign it.

The Acting Chairman: If there were three commissioners adjudicating the case separately and there was a doubt in the mind of one commissioner, what would happen then?

Mr. Anderson: Where three people are dealing with a claim at the appeal stage, if there is a doubt in the mind of one commissioner he will press to have that doubt considered and that may well result in the claim being granted.

The Acting Chairman: I was not quite satisfied with the answer that Mr. Reynolds gave earlier. I understood that he said that under the new legislation the burden shifted from the veteran to the commission. In the example that I gave, because a fellow had only one leg and became overweight there was no presumption that his coronary resulted from his being overweight and he would not get the benefit of the doubt that his overweight condition was due to his being an amputee.

Mr. Reynolds: There would have to be medical evidence established first that the amputation caused his condition of overweight, and further medical evidence to show or establish that in the opinion of some specialists the coronary arose from the fact that he was overweight. Once that evidence had been produced and the commission were satisfied, the onus would then rest with the commission. If they wished to try to rebut this evidence by securing other evidence to show that that was not the case, then they could do so.

The Acting Chairman: The essence of the case is in proving that he became overweight because he was not sufficiently mobile, that he was in a sedentary occupation. Medical evidence would have to prove that?

Mr. Reynolds: Yes. People become overweight for many reasons.

Senator Smith: And quite a lot of people get coronaries.

The Acting Chairman: Senator Inman asked a question. Perhaps Mr. Hanmer could reply to that.

Mr. Hanmer: Under the new legislation an opportunity will be afforded persons who have gone through the whole gamut of application to appeal board, and so forth, and who at the moment would not be able to make a further application, that when this new legislation becomes law they will be free to start from the beginning and process an application right through again as though nothing had happened in the past, except that the evidence from the earlier applications would be available. I think that might be important to other members of the committee who might know of persons who are interested and who might want to follow this up.

Senator Inman: Thank you very much.

The Acting Chairman: Are there any further questions on this section?

Mr. Chadderton: I was very pleased to have Brigadier Reynolds' explanation as to why the Government had not in the final analysis accepted the Woods recommendation. In our brief we were told that at one time the Woods recommendation was acceptable, but it obviously was not because it did not appear in the bill. This is the first time that we have had the explanation that it was felt by the Government that the Woods recommendation on the benefit of the doubt was going too far with the words used. We were not aware of that before this meeting.

Mr. Hanmer: Presumption of physical fitness on enlistment, clause 7(3): Bill C-203 provides that the presumption as to the medical condition of a person on enlistment may be rebutted on the basis of "medical evidence" that the disability or disabling condition existed prior to such enlistment.

One of the time-honoured concepts of pension law might be summed up in the words "fit to fight—fit for pension"; namely, that if a serviceman was accepted as being physically capable of combat, as indicated by his enlistment records, pension should not subsequently be denied him because of a pre-enlistment medical condition.

The Woods Commission proposed a presumption to the effect that a serviceman's physical condition at time of enlistment be that as indicated by his medical examination on enlistment, subject to rebuttal if there is evidence to indicate that the condition was diagnosed within three months of enlistment; that there is a record of its existence prior to enlistment, or that it was obvious at time of enlistment.

The chief feature of the Woods recommendation was that such presumption could be rebutted only on medical evidence supported by opinions from practitioners outside the employ of the Canadian Pension Commission.

The national veterans' organizations of Canada note, with some concern, that Bill C-203 had ignored the essential feature of the Woods recommendation, and in fact permits rebuttal of the presumption by medical evidence of Department of Veterans Affairs or Canadian Pension Commission medical advisers.

In our opinion, this offers very little improvement over the existing situation, under which a pension application can be refused on the basis of medical advice furnished

by commission or departmental staff, to the effect that the condition in question was possibly of pre-enlistment origin.

We do not object to a legitimate rebuttal of the presumption on the basis of medical evidence, but we do suggest the important proviso that such evidence should be obtained from impartial sources outside of the commission and the department.

We submit that clause 7(3), subsection 5(b) be amended to include the requirement that medical evidence used in rebuttal be "supported by recognized medical practitioners not in the employ of the Canadian Pension Commission or the Department of Veterans Affairs".

The Acting Chairman: Are there any questions?

Senator Phillips: Mr. Acting Chairman, I am interested in determining the policy that the commission follows in regard to claims such as the one you mentioned a moment ago, that various conditions such as coronaries and kidney conditions were pre-enlistment. In other words, I would like to know where they get their authority in making such statements?

Mr. Anderson: I should like to ask Dr. Richardson to answer that question. He is our Chief Medical Adviser. These types of diseases are complicated and I am not a doctor.

Dr. Richardson: The commission's medical staff does not originate medical opinion adverse to any applicant's claim. We identify evidence relevant to the claim from medical literature which we document and may quote to the commission as required from medical text books or medical literature.

We do in some areas obtain expert opinion from highly respected consultants employed by the Department of Veterans Affairs or from consultants not in the Public Service. It is on this consensus of expert opinion that the medical adviser packages the evidence of medical comment to present to the commission.

Senator Phillips: Do you ever consult with various medical schools or research programs to determine if the policy followed by the department is in agreement with the opinion held by the medical schools? As you know, not every research worker will agree as to what stage in life arteriosclerosis begins. Did you contact these research workers to see if there is any consistency between their findings and the views you hold?

Dr. Richardson: This has been done freely; we have consulted freely with members of the staff of various Canadian and non-Canadian universities.

Senator Phillips: A case that has always annoyed me is the decision of the commission involving a young chap who was a pharmacist in civilian life. At the time of his enlistment, because there was no need for pharmacists, he joined an infantry regiment. He went through the Italian campaign and then France, Germany. He died of a coronary about two months after he was discharged and the ruling of the commission was that the coronary con-

dition was pre-enlistment and not aggravated through service.

I have never been able to understand how on the one hand we use hardship as the basis of war veterans' allowances and yet the commission can say that his coronary condition was not aggravated by service in the Italian and European campaigns. In my opinion it is just not reasonable.

Dr. Richardson: Perhaps we know something more about arteriosclerotic heart disease in 1971 than we did some years ago. I do not recall seeing the claim you mentioned. However, I have no doubt that if the claim were renewed under the new amendments it would be given very careful study and we would obtain the best expert advice we could regarding this particular subject.

Senator Phillips: I think you will find it interesting to review my correspondence of 1948 then, Dr. Richardson. I am pleased to hear that you are now ready to reconsider the case.

Mr. E. H. Slater, Service Officer, Dominion Command, Royal Canadian Legion: We in the Legion are more concerned with the administrative and procedural work in endeavouring to establish pensions for veterans. We believe this particular section concerning pre-enlistment conditions is probably one of the biggest factors we will have to face when we meet the flood of new cases which will come to our attention, particularly involving those veterans who have served only in Canada. The introduction of the rebuttal of the presumption provisions will open this up. We have found by past experience that the medical advisers, contrary to what Dr. Richardson has said, expressed opinions on the file in their white papers which have gone against the veteran's claim. We do hope that in future the new provisions for evidence and pre-enlistment conditions will make a difference to those claims that come to our attention.

The reason for bringing this matter to your attention is that we hope that the medical evidence referred to in subclause (5) (b) will be medical evidence from others than those in the employ of the department or the commission. In our submission that will make a big difference in those cases we process for adjudication.

The Acting Chairman: The brief suggests an amendment that the medical evidence used in rebuttal be supported by recognized medical practitioners not in the employ of the Canadian Pension Commission or the Department of Veterans Affairs.

Mr. Reynolds: Yes, that is about the only difference between this and the Woods committee recommendation. It certainly does not exclude it, but I think that the view adopted by the veterans' bureau is that an opinion passed by a medical adviser is not really medical evidence. Therefore, the opinion of a medical adviser would not rebut the presumption.

Senator Phillips: Would you mind repeating that statement concerning the advice of a medical adviser in the department?

Mr. Reynolds: As I understand it, the view of the veterans bureau is that the medical advisers do not really give medical evidence, by and large.

Dr. Richardson: That is correct; we quote medical opinion, rather than producing it ourselves. We, as an advisory staff, do not initiate principles.

The Acting Chairman: Does that mean that the medical evidence must come from outside?

Mr. Anderson: It necessarily follows.

The Acting Chairman: And therefore the amendment would not be necessary?

Mr. Anderson: That is our view.

Mr. Slater: This may be the case, but only time is going to tell whether we require this particular amendment. We would like to see it written into the legislation. However, if the feeling of the department is that they are already carrying out this practice and will continue, then we will have to wait and see.

The Acting Chairman: I gather, then, that the medical adviser only interprets the evidence for the commissioner, is that his function?

Dr. Richardson: It is rather difficult, sir, to give an impromptu definition. Naturally, medical advisers have clinical experience; some of them are certified specialists of the Royal College; almost all of them have had military service. Collectively they have a tremendous amount of clinical knowledge and a good deal of sound opinions.

When I suggested that the medical advisory staff does not originate medical opinion evidence, I intended to indicate that we do not offer the commission medical advice which we believe is inconsistent with the consensus of expert opinions. We may not agree with the consensus of expert opinions on a given point, but we act on the basis of the consensus of expert opinion as we understand it from medical literature and personal contact or through correspondence with consultants who are highly respected in their field.

For example, in one area of one specialty, many of the points with which the commission must deal have been the subject of case discussion with one of the best-known and most highly respected consultants in Canada. He happened to be in the employ of the department on a part time basis. It was on the basis of his reply to a long series of questions that medical advice was given in that particular field of medicine. In this sense we were not originating evidence; we obtained opinion evidence from a highly qualified specialist and gave effect to it in our medical advice.

That may not be an entirely satisfactory answer but I would be glad to try again if you wish.

Mr. Chadderton: I do not really think we are coming to grips with the main point. We are naturally looking at it from the point of view of the veteran who is applying. This is a very common conversation in the office of a service bureau officer. He will inform an applicant that his application has not succeeded, because the commis-

sion decided that the disability was of pre-enlistment origin. The veteran will enquire who within the commission said this and he will be told it was the view of the medical adviser employed by the commission. On that basis the veteran cannot believe that he has had an even break.

The main point made by the Woods committee was that there should be a rebuttal of presumption and the type of medical evidence to which Dr. Richardson refers should be brought to bear, but it should be absolutely clear that it is not the opinion of a medical adviser or of any medical officer employed by or in any way connected with the commission or the department. In other words, it should state: "Dr. Harry Jones, who is a specialist in this field in the department, gave this opinion and here it is". I think the veterans' organizations would be quite satisfied if that were the case, if we could say to the veteran, "Your presumption was rebutted on the basis of an opinion from a recognized medical specialist who has no connection with the department." But we are afraid that the way the legislation reads in Bill C-203, we are right back in the same old ball game and that a medical adviser will write a white slip which will be called a medical precis, and that medical precis will say, "The opinion of the medical adviser is that this is a pre-existing condition." If we can have the assurance that this is not going to happen and that these presumptions will be refused only on grounds of opinion from people not employed within the D.V.A., then I think we would be quite satisfied. Incidentally, we in the veterans' organizations do not want to get hung up on a legal definition of the difference between "opinion" and "evidence". As far as we are concerned, somebody made the statement it was pre-existing. Whether it is opinion or evidence, it does not matter; it has been sufficient to turn a man down.

The Acting Chairman: Mr. Chadderton, your amendment would not take care of that situation, because if you brought in an outside specialist, the medical adviser is still going to assess.

Mr. Chadderton: That is quite all right; we have no objection to that:

...supported by recognized medical practitioners not in the employ of the Canadian Pension Commission or the Department of Veterans Affairs.

Naturally, we can see the situation where the medical adviser of the commission is going to prepare a medical précis, but not on his own opinion or something that he read in a book. He has to get an opinion, the same as we do.

The Acting Chairman: But the medical adviser may not consider this specialist's opinion as in keeping with the general opinions of specialists in this particular field, and he is still in a position where he can advise the Pension Commission to that effect, and the commission would act on his advice, and there would be nothing binding on the commission to act on the advice of the outside specialist.

Mr. Chadderton: You are quite right, Mr. Chairman. We do not expect that this amendment would solve the issue entirely, but it would at least establish the ground rule that if the commission is going to rebut the presumption, or the pension adjudicator is going to rebut the presumption, he has to get an opinion from someone outside of the department. That is the thing that is very difficult to explain to the veteran, that he was turned down by an opinion from somebody in the employ of the Minister of Veterans Affairs.

Senator Lang: Justice must seem to be done.

Mr. Chadderton: That is it exactly, Senator Lang.

Senator Phillips: I have one further question for the medical director. This is a question I have been asked a good many times in connection with the pre-enlistment claims. The veteran says, "Why didn't the medical officer find it on enlistment?" I have never been able to give a satisfactory answer to the veteran on that. I am wondering just how much attention you do pay to the enlistment records when giving your medical opinion.

Dr. Richardson: In developing medical advice for the commission we do examine the records minutely, the records as they stand, and also in light of our knowledge of the circumstances under which the medical examinations were carried out at various times and places. We know that many records are deficient because it was the policy of the Department of National Defence at the time to limit medical enquiries or medical examinations.

Perhaps I should say that the entire medical staff, including the Chief Medical Adviser, have read the Pension Act repeatedly, including present section 70, and we make very honest efforts not to draw inferences which are not fully established on the records available to us. We are not really hostile advisers, if I might say so.

Senator Fournier (De Lanaudière): Mr. Chairman, we have been discussing this at quite some length. So far as I can see, it leads nowhere, and so far as I personally am concerned I am sufficiently informed that I would be prepared to put the question in order to put an end to that dry discussion.

Senator Phillips: I rather regret the terminology "dry discussion". It may have been a lengthy discussion, but I found it most interesting and helpful, and I hope that other members of the committee found the same.

Senator Fournier (De Lanaudière): I was not insinuating anything against the honourable senator.

The Acting Chairman: Are we ready to move on to the next section?

Senator Fournier (De Lanaudière): I ask that the question be put now...

The Acting Chairman: We are moving on to the next section now.

Senator Fournier (De Lanaudière): ...or that we adjourn. I would prefer that the question be put now, but if it cannot be, I would move the adjournment because

we do not have only this to do when we are the party in power. For the Opposition that is another affair.

The Acting Chairman: I am not quite sure what question you want to put.

Senator Fournier (De Lanaudière): That the question be put now, that we vote, "Those in favour of the bill say yea, and those against nay".

Some hon. Members: No, no.

The Acting Chairman: I do not think that would be fair to the witnesses, Senator Fournier. I think we must continue and hear their brief. We have undertaken to do that.

Senator Fournier (De Lanaudière): I move the adjournment. I cannot stay any longer, and I move the adjournment until next week.

The Acting Chairman: We have a motion to adjourn, and it is not debatable. I have to put the question, and I hope that everyone is listening this time.

Senator Phillips: This is not debating, but a question for clarification. Until when shall we adjourn?

Senator Fournier (De Lanaudière): Next week.

The Acting Chairman: Until Tuesday I suppose.

Senator Fournier (De Lanaudière): No.

Senator Smith: Let us see if we can resolve our various conflicts which seem to come up from time to time. I have not been here all the time because I was called out to another meeting. Are there no prospects of our continuing and making more progress?

The Acting Chairman: We are about half way through the brief.

Mr. Chadderion: More than that.

The Acting Chairman: I think we have dealt with the most contentious part. There is only one other coming up that I see we might spend some time on, and that is "exceptional incapacity". I have a motion to put.

Senator Smith: May I ask Senator Phillips or anyone else: Are there any other contentious issues which they seek to raise?

Senator Phillips: I have not read the brief, Senator Smith and I cannot comment on what is left in it. Despite your opinion that I had seen the brief beforehand, I assure you that I did not and I have no idea what is in the brief. I am willing to continue. I would like a further meeting because I want to move an amendment.

The Acting Chairman: I must put the motion. Those in favour say yea, and contrary nay. The nays have it.

Senator Phillips: Perhaps at this time we could arrive at agreement that we finish hearing the brief and then adjourn. Probably that would be satisfactory to everyone.

Senator Smith: If we could get through one phase of it, we could then deal with it expeditiously at the next opportunity we have.

Senator Phillips: Yes. As I say, at the next meeting I intend to move a couple of amendments, but I would like to have the brief finished today.

Senator Smith: Could you give notice of those because that would be helpful to the department, or would you care not to?

Senator Phillips: I think that I can have my secretary draft them this afternoon, and give them to you.

The Acting Chairman: How many are prepared to sit and, at least, deal with the brief? We have the witnesses here.

Some hon. Senators: Agreed.

The Acting Chairman: Very well, we will continue. There are no more questions on this section on the presumption of physical fitness? Can we move on to "leave to re-open"?

Mr. Hanmer: Leave to re-open, clause 68: The national veterans' organizations of Canada are strongly of the opinion that the position of the pension review board as envisaged in the new legislation will be jeopardized by the proviso to the effect that the commission will not re-examine a case without the prior consent of the board.

This apparently means that, even where there is ample new evidence, or where there has been an error, the commission will not look again at the application until instructed to do so by the pension review board.

This provision is contained in clause 68, despite the recommendation of the Standing Committee on Veterans Affairs to the effect that the grounds for "leave to re-open" before the commission be considerably broadened, so as to make it possible for the commission to rehear a case if there is any indication that in so doing it would be able to come up with a favourable decision.

It is difficult to understand the basis for the restriction in the proposed legislation which would prohibit the commission from giving reconsideration to applications, where new evidence exists or where there has been an error in the previous determination. To impose the burden of having to grant leave to re-open in such instances upon the review board is, in our view, to place upon it a responsibility which is inconsistent with its role as an appellate body. If there is reason to expect that the adjudicators at the first level would have made a different decision on the basis of new evidence, or if there has been an apparent error, it should be a question for reconsideration by the commission. Generally speaking, the function of the appellate body should be restricted to a review of the case when there is no further possibility that the lower body can reach a favourable decision.

The evidence given to the Standing Committee on Veterans Affairs by departmental representatives would seem to indicate, firstly, that to have an unrestricted "leave to re-open" policy could result in congestion at the

commission level. The contention of the national veterans' organizations is that, if such congestion is unavoidable, it is possibly less damaging to the interests of pension administration to have this occur at the first and second stages, for example, at first decision before the commission or before an entitlement board of the commission, than to run the risk of overloading the review board with responsibility to consider such applications, and return them to the commission if grounds for "leave to re-open" exist.

As with the Government proposed pension review board, we reluctantly take the attitude on "leave to re-open" that only time will tell, as to whether the proposal in Bill C-203 is the correct one. We firmly believe that the principle of forcing the applicant to go to the review board, even where there is new evidence or where the initial adjudication has presumably been in error, is entirely wrong. In our view, however, there is nothing to be gained now by attempting to secure an amendment to the legislation. It is perhaps sufficient now for us to place our views on record, so that we would have legitimate grounds to propose a change in the legislation, if in fact experience indicates the need to permit the commission to re-open its own cases where new evidence or error exists, without a prior decision of the pension review board.

The Acting Chairman: Do you have any comment to make on that, Mr. Reynolds?

Mr. Reynolds: I have only a brief comment to make. It must be remembered that before an applicant appears before the pension review board he will have had his case considered on first application. Any new evidence that he has he can produce again on the second application. If he is not satisfied with that, he goes before the entitlement board where again he can produce new evidence.

The chances are that in most cases all new evidence that a man has to produce will be produced at the entitlement board hearing, No. 4, and when it gets up to the review board it is not a question of considering new evidence but a question of appeal on the evidence that already exists.

As far as backlog and overwork in the pension review board is concerned, it must be remembered that no case will go to the pension review board unless it first has had an entitlement board hearing. That will limit the number of cases that can go before the entitlement board. There is not likely to be any backlog. I repeat what was said by Mr. Ward that any backlog likely to exist in this legislation is more likely to be with the commission and the entitlement board than it is with the pension review board.

If a man has been to the entitlement board, has new evidence, and does not want to proceed to have the case finally disposed of by the pension review board, there is provision in the legislation that if he applies to the pension review board and says that he has new evidence he can ask the board to refer the case back to the commission for further consideration, and the pension review board has jurisdiction to do that.

As Mr. Slater has said, only time will tell how this will work; but it is the feeling of the department that the plan as laid down in the legislation is more likely to work if it was left unlimited at the commission level. It could go round and round, from the commission to the entitlement board, back to the commission with new evidence, and then to the entitlement board again, and then back to the commission. We feel that this other plan is more orderly and more likely to work.

The Acting Chairman: You speak of the Pension Commission, the initial hearing and the entitlement board. Is the initial hearing done in the department or is it done by the Pension Commission?

Mr. Reynolds: It is done by the commission; that is the first application, the second application, the Canadian Pensions, and the entitlement board.

The Acting Chairman: When you are speaking of the two bodies, they are really the same body?

Mr. Reynolds: That is right, but performing two functions.

The Acting Chairman: This is no different from what it has always been. The Pension Commission has always held the initial hearing and granted the entitlement. There is no change.

Mr. Reynolds: There is no change.

The Acting Chairman: I find it a little confusing when you speak about three separate bodies. Actually there are only two bodies, the Pension Commission and the pension review board. When you say the initial hearing and the entitlement board you are talking about the same body?

Mr. Reynolds: No, sir. It is not an initial hearing any more. The first application takes the place of the initial hearing, and the second application takes the place of the renewal hearing. In the past we went to the appeal board, but it will now be the entitlement board.

The Acting Chairman: But the entitlement board is now the Pension Commission?

Mr. Reynolds: Yes. The only new thing is the pension review board.

Senator Phillips: Would it be fair to say that this provides leave to re-open only with the approval of the review board?

Mr. Reynolds: Yes, you have to advise the pension review board.

Senator Phillips: Direction to re-open with leave of the review board. As I understood the previous legislation you could re-open in special cases with the approval of the appeal board. There is very little difference. In other words, this bill provides very little benefit in this clause.

Senator Inman: Let us finish reading the brief before having any further discussion.

The Acting Chairman: We have only one section left. We could leave further questions to another meeting.

Senator Phillips: Yes.

Mr. Chadderton: Exceptional incapacity, clause 59: The bill proposes that provision be made for allowances for exceptional incapacity of not less than \$800 and not more than \$2,400 per annum, over and above the rate for 100 per cent disqualification in the unskilled labour market.

The Woods Commission recommended an upper limit of such allowances of \$7,950 per annum. The veterans organizations of Canada endorsed the recommendation of the Woods Commission as being reasonable compensation for the approximately 250 pensioners involved. Notwithstanding, in view of the economic circumstances which existed in Canada in 1970, we agreed to a compromise at the "half-rate" above 100 per cent, which would have resulted in a maximum allowance of approximately \$3,975.

The Standing Committee on Veterans Affairs, in its report of June 1970, suggested an upper limit for the highest level of exceptional incapacity of \$3,500.

The cost of implementing the Standing Committee's recommendation of \$3,500, compared with the upper limit of \$2,400 proposed in Bill C-203, has been given variously as between \$500,000 and \$750,000 per annum. Representatives of the National Veterans' Organizations of Canada met in study sessions with officials of the Department of Veterans Affairs and the Canadian Pension Commission, in order to reach realistic estimates of the cost of this and the other proposals in the Woods Committee report. We readily admit that the estimate of \$500,000 for the additional cost of implementing the Standing Committee recommendation could be low.

We do wish to comment, however, that in our five-month study of the Woods Committee report and the White Paper on Veterans' Pensions, the Veterans' Organizations did take into careful account the cost factors in regard to proposals for revision of our pension legislation. In this respect, we deferred requests based on Woods Committee recommendations, the implementation of which would have cost an estimated \$18,635,000. These recommendations included:

No. 61—Payment of war disability pensions to personnel remaining in Regular Force	\$ 1,290,000
No. 106—Pension to widows of personnel in receipt of less than 48% pension at death	10,000,000
No. 108—Pension for child to be continued to age 25 when undergoing course of instruction	2,560,000
Nos. 127 and 128—Improper conduct	1,000,000

It was our feeling that by doing this, we would be making it easier for the Government to establish priorities in regard to other recommendations which should be given precedence. One of these recommendations was, of course, the requirement for a very significant increase in the compensation under the Pension Act for those with Exceptional Incapacity or multiple disabilities. In fact, the entire cost of the recommendations in Bill C-203, as it stands, has been estimated by a study group composed of

officers of the Department of Veterans Affairs and the National Veterans' Organizations of Canada at approximately \$5,750,000. The Government's liability for payment of war disability pensions has been decreasing at the rate of approximately \$2,500,000 per year.

I might add here that that does not take into account the credits which might come about with the new 10 per cent which we hope will go before the house for April 1. At the present time it has been decreasing at that rate of about \$2½ million per year. The cost of these as we see them will be a little better than \$5 million.

We cite these figures as an indication that the over-all cost involved in establishing an adequate ceiling for payment of Exceptional Incapacity allowances, even at the maximum estimate of \$750,000 a year, does not appear large in comparison with other essential Government expenditures.

We consider it would be justified to request an amendment to Bill C-203 at this time, to increase the maximum Exceptional Incapacity award to \$3,500. It is not the intention, however, to unduly delay the passage of this long-awaited legislation. Therefore, it would satisfy the situation, so far as we are concerned, if the limitation of \$2,400 in Bill C-203 becomes law in the near future so long as, in the Senate Committee stage, there is support for the higher limit. This might well pave the way for further consideration of an increase in this maximum when it is possible to re-open the Pension Act before Parliament.

The other major point, in respect of Exceptional Incapacity, concerns Clause 59(3). Specifically, this clause would have the effect that an allowance may be decreased if pension authorities decide that the disability can be lessened by wearing a prosthesis. This could have the effect of reducing the allowance for severely-disabled veterans, should they attempt to overcome their disability by the use of artificial arms or legs. This proviso is in direct conflict with a recommendation in the Report of the Standing Committee on Veterans Affairs of June 22nd, 1970, which proposed that such allowances be paid as of right, and included the statement:

This right will not be affected by the pensioner's means or his degree of rehabilitation.

The Committee Report was concurred in by the House of Commons on June 23rd, 1970.

We recognize, of course, the medical principle that a good-fitting prosthesis can be of considerable assistance to an amputee. We must, however, give priority to the rehabilitation aspect, and it is our experience that an incentive is often needed to encourage a severely-disabled person to make use of artificial limbs. Hence, our objection in this matter is based on the simple fact that it will represent an economic penalty for the disabled pensioner who attempts to overcome his handicap. It will place him at a disadvantage in relation to his fellow pensioner who does not make the effort to use a prosthesis.

It is emphasized that, in many instances, an amputee may very well be reluctant to wear the often-crude prosthetic device. We are convinced that the type of prost-

theses available through the Canadian Government for war amputees, is comparable to any produced throughout the world. It should be borne in mind, however, that an artificial limb falls very far short as an adequate replacement for the natural limb, despite advances in the prosthetics field. To the severely disabled amputee, suffering as he does from phantom limb pain, excessive sweating, irritable nerves and a great degree of general discomfort, the added difficulty of strapping on a prosthesis to keep himself mobile cannot be dismissed lightly. If, however, he does make this effort, it seems unreasonably cruel to penalize him, in respect of any compensation which he might otherwise expect for his disability.

It is perhaps significant that the principle of reducing pension compensation by reason of any remedial effect achieved through external prostheses such as artificial arms and legs, is frowned upon by international rehabilitation authorities. The emphasis lies in encouraging the amputee to overcome his disability and most countries are very careful to write protection into their pension laws, to ensure that any rehabilitative gains are not wiped out by paying less pension for the disability itself.

We have no objection to the provision that the remedial effects of *treatment* should be taken into account. We submit, however, that when the treatment phase has been completed, and he is ready to wear his artificial limbs, his assessment for pension purposes should be made. Also, we have no objection to clause 59(4), which we interpret to mean that an exceptional incapacity allowance may be reduced if the amputee unreasonably refuses to use a prosthesis.

We emphasize that the only case we are interested in protecting is the legitimate instance where the amputee is doing his level best to cope with his situation through using prostheses—and we cannot see justification in penalizing him for any success in this regard.

In conclusion, Mr. Chairman: we again express appreciation to the Senate Committee on Health, Welfare and Science for the opportunity of making this submis-

sion. We feel that your committee's deliberations will have particular importance, as they probably represent the final "round" in a series of studies which commenced with the inception of the Woods Committee in September of 1965.

That is submitted on behalf of the National Veterans' Organizations of Canada.

The Acting Chairman: Thank you, Mr. Chadderton.

We have now gone as far as we can today. I would ask the witnesses to be available at our next sitting, some time next week, for further questioning.

On behalf of the committee I express our thanks to Mr. Chadderton, the Secretary of the National Council of Veterans' Associations, Mr. Hanmer of the Royal Canadian Legion, Dominion Command, and his assistants, Mr. Slater and Mr. Donphy. We also thank Mr. Anderson, President of the Canadian Pension Commission, Dr. Richardson, the Chief Medical Adviser, Mr. Hodgson, the Deputy Minister of Veterans Affairs, Mr. Reynolds, his legal adviser, and Mr. Kendall of the minister's office.

Senator Smith: Mr. Chairman, it might be well to point out that it will probably be possible to give concluding consideration to this bill next Wednesday morning. This is not firm yet, but it will likely be around 11 o'clock in the morning. I think we will avoid conflicts if we meet at that time, which will provide adequate time for the issue of notices.

I do not think we should close the meeting without pointing out to those members and others who may not be aware of the fact that it is a great pleasure to have Senator Carter in the Chair during a discussion of veterans' affairs. He went overseas at 15 years of age in World War I and put in four years in World War II.

The Acting Chairman: Thank you very much. The meeting will adjourn at the call of the Chair; the notice will be issued when we decide on a suitable time.

The committee adjourned.

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THIRD SESSION—TWENTY-EIGHTH PARLIAMENT

1970-71

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING SENATE COMMITTEE ON

HEALTH, WELFARE AND SCIENCE

The Honourable C. W. Carter, Acting Chairman

No. 4

WEDNESDAY, MARCH 17, 1971

Second and Final Proceedings on Bill C-203

intituled:

“An Act to amend the Pension Act and the Civilian
War Pensions and Allowances Act”

REPORT OF THE COMMITTEE

(Witnesses:—See Minutes of Proceedings)



THE SENATE COMMITTEE ON HEALTH,
WELFARE AND SCIENCE

Chairman: The Honourable Maurice Lamontagne

The Honourable Senators:

Bélisle	Hastings
Blois	Inman
Bourget	Kinnear
Cameron	Lamontagne
Carter	Macdonald (<i>Cape Breton</i>)
Connolly (<i>Halifax North</i>)	McGrand
Croll	Michaud
Denis	Phillips
Fergusson	Quart
Fournier (<i>de Lanaudière</i>)	Robichaud
Fournier (<i>Madawaska- Restigouche</i>)	Roebuck
Gladstone	Smith
Hays	Sullivan
	Thompson
	Yuzyk—(28)

Ex officio Members: Flynn and Martin

(Quorum 7)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate for Wednesday, 10 March, 1971:

After debate, and—

The question being put on the motion of the Honourable Senator Smith, seconded by the Honourable Senator Inman, that the Bill C-203, intituled: "An Act to amend the Pension Act and the Civilian War Pensions and Allowances Act", be referred to the Standing Senate Committee on Health, Welfare and Science.

It was—

Resolved in the affirmative.

Robert Fortier,
Clerk of the Senate.

Minutes of Proceedings

Wednesday, March 17, 1971.
(4)

Pursuant to adjournment and notice the Standing Senate Committee on Health, Welfare and Science met this day at 11:00 a.m.

Present: The Honourable Senators: Carter (*Acting Chairman*) Bélisle, Denis, Hastings, Inman, Kinnear, Macdonald (*Cape Breton*) McGrand, Phillips, Robichaud, Smith, Sullivan, and Thompson. (13)

The following Senators, not members of the Committee, were also present: The Honourable Senators Macnaughton and White.

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

On Motion duly put it was Resolved to print 800 copies in English and 300 copies in French of these proceedings.

The Committee proceeded to the consideration of Bill C-203, "An Act to amend the Pension Act and the Civilian War Pension and Allowances Act".

The following witnesses were heard in explanation of the Bill:

Mr. C. Chadderton, Secretary, National Council of The National Veterans' Organizations of Canada;

Mr. J. S. Hodgson, Deputy Minister, Department of Veterans Affairs;

Mr. T. D. Anderson, President, Canadian Pension Commission;

Dr. H. Richardson, Chief Medical Adviser, Canadian Pension Commission;

Mr. P. E. Reynolds, Director, Legal Branch, Department of Veterans Affairs.

The following were also present but were not heard:

Messrs. H. Hanmer and E. H. Slater, Service Officers, Dominion Command, Royal Canadian Legion.

The Honourable Senator Phillips moved that the said Bill be amended as follows:

"that subsection 3, section 59 be eliminated and the following subsections renumbered."

After debate the question being put, the Committee divided as follows:

Yeas-4 Nays-7

The motion was declared passed in the negative.

The Honourable Senator Phillips moved that the said Bill be amended as follows:

"that subsection 4 be eliminated."

After debate the Honourable Senator Phillips withdrew his Motion.

The Honourable Senator Phillips moved that the said Bill be amended as follows:

"that lines 13 to 19 on page 39 be removed and the following substituted therefor:

"and where the evidence has been considered and all reasonable inferences drawn in his favour, and any doubt exists as to whether the applicant or member has established his case, such applicant or member shall be entitled to the benefit of such doubt, in that his claim may be allowed even though he may not have established it by a preponderance of evidence."

After debate, the question being put, the Committee divided as follows:

Yeas-4 Nays-7

The Motion was declared passed in the negative.

At 12:50 p.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Denis Bouffard,
Clerk of the Committee.

Report of the Committee

Wednesday, March 17, 1971.

The Standing Senate Committee on Health, Welfare and Science to which was referred Bill C-203, intituled; "An Act to amend the Pension Act and the Civilian War Pensions and Allowances Act", has in obedience to the order of reference of March 10, 1971, examined the said Bill and now reports the same without amendment.

Respectfully submitted.

Chesley W. Carter,
Acting Chairman.

The Standing Senate Committee on Health, Welfare and Science

Evidence

Ottawa, Wednesday, March 17, 1971.

[Text]

The Standing Senate Committee on Health, Welfare and Science, to which was referred Bill C-203, to amend the Pension Act and the Civilian War Pensions and Allowances Act, met this day at 11 a.m. to give further consideration to the bill.

Senator Chesley W. Carter (*Acting Chairman*) in the Chair.

The Acting Chairman: We shall now resume our discussion of Bill C-203. When we ended our last sitting we had as witnesses Mr. Chadderton of the National Council of Veterans Associations and Mr. Hanmer of the Royal Canadian Legion who made their presentations. Mr. Hodgson, you intimated that you would like to speak by replying to their evidence. Before I call on Mr. Hodgson I understand Mr. Chadderton has a letter which he would like to have placed on the record.

Mr. C. Chadderton, Secretary, National Council of Veterans Associations: Yes, I would, Mr. Chairman. The purpose of this statement is to clarify the position of the National Veterans Organizations with regard to the question of delay. We referred to it last week. This statement or letter is addressed to Senator Carter and merely says:

The National Veterans' Organizations of Canada appreciate the opportunity of appearing again before your Committee to answer questions arising out of our submission of March 11th.

We desire to emphasize that, in our opinion, any delay in the passage of this legislation will be of serious consequence to veterans and their dependents. It is hoped, therefore, that the deliberations of this Committee will be carried out with all possible despatch.

Yours very truly,

H. C. Chadderton,

(for NATIONAL VETERANS' ORGANIZATIONS
OF CANADA)

The Acting Chairman: Thank you, Mr. Chadderton.

Mr. J. S. Hodgson, Deputy Minister, Department of Veterans Affairs: I would like to assure the committee that my only purpose is not to say anything at all that is controversial, but to state as factually and clearly as I can the Government's position with two of the questions that were raised in the brief that was considered at the last meeting of the committee. Both of these questions

relate to the matter of exceptional incapacity. The committee will recall that one of the questions that was mentioned was the matter of the maximum amount of allowance for exceptional incapacity. In this regard I think I can do no better than to read the statement on the subject which the Minister of Veterans Affairs made at the House of Commons Committee on January 15:

A second question raised, referred to the maximum amount of allowance. The White Paper had indicated that the maximum might be \$1,200 a year, the Standing Committee suggested \$3,500, and the Bill says \$2,400. Several members urged that the \$3,500 figure be used. Mr. Chairman, all of us I am sure will agree that this is a field where one cannot fully compensate in money for physical and psychological pain and suffering, particularly in these cases where military service has caused not merely 100 per cent disability for pension purposes but also exceptional incapacity. Therefore there is no quantitative formula for selecting any particular figure as being the only correct one. However, I would remind members that, in response to the committee's recommendation, the government has doubled the maximum figure published in the White Paper.

The allowance should be considered in its full financial context, rather than in isolation. After April 1st a 100 per cent pensioner, married but with no children, who receives the maximum allowance for incapacity and the maximum attendance allowance, will receive, First a pension of \$4,464, a year, Second an attendance allowance of \$3,000, Third an exceptional incapacity allowance of \$2,400,

Making a total of \$9,864 a year apart from clothing allowance. As all these payments are exempt from income tax, they are the equivalent of a gross income, if taxable, of \$13,600. These amounts will apply to all of the most severe cases. Also they are payable for life and with pension survivor benefits, and therefore no provision need be made from them for superannuation or retirement income.

The minister also said that if the pensioner was over 65 years of age he might in addition receive under the Old Age Security Act a further \$3,060 raising the total to the equivalent of a gross income, if taxable, of something over \$16,000. I do not wish to comment on the statement. This is simply what the minister said.

I would now like to move on to the other point which is in regard to the matter of the wearing of a prosthesis. The bill, as it presently stands, in clause 59(3) authorizes the Canadian Pension Commission to take into account in

measuring exceptional incapacity, the degree to which incapacity is lessened by treatment or the use of prosthesis. Subsection (4) authorizes the commission again, in its discretion, to reduce to not more than one-half the allowance for exceptional incapacity in a case of a person who unreasonably refuses the use of a prosthesis.

Mr. Chairman, I would like to emphasize that the proposed allowance on exceptional incapacity is a completely new principle. It is not compensation for disability or added compensation for multiple disability. Indeed, clause 59(2) indicates the particular criteria that relates to this allowance and they are not identical with the criteria which relates to the pension itself. It is the pension which represents compensation for disability. The exceptional incapacity allowance relates to a person who is suffering from exceptional incapacity that is a consequence of or caused in whole or in part by such disability. It is stated that account shall be taken of the extent to which the disability has left the member in a helpless condition or in continuing pain or discomfort or resulted in loss of enjoyment of life or has shortened his life expectancy.

I might illustrate by taking two persons, both of whom for pension purposes have been assessed as 100 per cent pensioners. One only has one disability, whereas the other has a number of different disabilities. If one added these up arithmetically, separately assessed, his total disability might have looked like 180 per cent, yet one could easily have a situation where one disability of 100 per cent completely incapacitates a veteran, whereas the other gentleman with a variety of disabilities may be reasonably mobile and not as seriously incapacitated. The bill is to measure the incapacity and not to enumerate the disabilities.

Next is the matter of a prosthesis. It is natural when speaking of a prosthesis to think in terms of artificial limbs, which are familiar forms of prostheses. There are a great number of other kinds of prostheses as well, such as the pace-maker which is inserted to control the action of the human heart. There is the metal plate which goes into the head, without which a person may really be incapacitated, but with which he may be reasonably mobile. There is a prosthesis which aids vision and another which aids hearing. I do not say this lightly, but these matters are relevant. Take for example a veteran who has a considerable variety of disabilities, one of which is serious optical impairment—he can hardly see. Without glasses that veteran might be completely incapacitated, but with glasses his life might be transformed and he may become reasonably mobile. Subsection (3) of the bill says it is not necessary to appraise for exceptional incapacity purposes this veteran as if he were wearing no glasses. One may recognize the fact that the use of glasses may change the character of his life.

May I just refer to two other kinds of cases. One is the case of where the veteran has used a prosthesis. Had he unreasonably refused to do so his allowance might have been reduced, but he did not, he used the prosthesis and as a result he is reasonably mobile. Another veteran would like to use a prosthesis, but for medical reasons he is not suffering from the kind of disability that permits

him to use one. In the case of an amputation perhaps it is a condition where, medically, prosthesis cannot be applied to the stomach. It is not necessarily a matter of will power, but a medical fact in the case that I am hypothesizing. The bill is saying that this person who is inevitably and completely incapacitated may be regarded as one notch more seriously incapacitated than the one who is less incapacitated by reason of treatment or by reason of prosthesis.

Mr. Chairman, I have tried to explain the viewpoint of the Government in preparing these subsections.

The Acting Chairman: Thank you, Mr. Hodgson. I should have explained to members not present at our last meeting, that we had a brief presented by Mr. Chadderton on behalf of the National Veterans organizations. We went through that brief, section by section, and came to the last one which was entitled "Exceptional Capacity". Our mode of operation was that we would take each section separately. We had no opportunity to question the witnesses on the last section of their brief. There was only time to read it into the record.

Senator Phillips: It is not correct procedure to hop from one witness to another without the opportunity to question. We should finish with one witness and then question him, otherwise we are wasting time.

The Acting Chairman: I was suggesting that we finish the subject of exceptional capacity. They read their chapter into the record and we have dealt with all the other sections of their brief except this one. At the conclusion of reading it into the record at the last meeting Mr. Hodgson asked if he could be heard on this particular section.

Senator Phillips: Once he speaks he opens himself up to questioning and I would like to question him. Could I have your figures concerning the total amount received by veterans again?

Mr. Hodgson: Yes. I might point out that these were the figures used by my minister. This refers to a 100 per cent pensioner, married with no children, who receives the maximum allowance of incapacity and the maximum attendance allowance. First, a pension of \$4,464 a year; second, an attendance allowance of \$3,000; and third, an exceptional incapacity allowance of \$2,400, making a total of \$9,864.

Senator Phillips: Which you gave as equivalent to \$13,000?

Mr. Hodgson: The minister states these are the equivalent of a gross income if taxable of \$13,600. He went on to mention OAS and GIS.

Senator Phillips: The thing that disturbs me is the fact that you are creating the impression that those receiving 100 per cent disability are receiving an equivalent of \$13,600. There are approximately 5,000 veterans receiving 100 per cent disability. How many receive the \$3,000 attendance allowance?

Mr. Hodgson: Mr. Chairman, without having the figures available at the moment, I certainly did not intend

to imply that every 100 per cent pensioner would receive all of these payments. This, of course, is not the case. This is why I think the minister's statement refers to the person who is 100 per cent pensioner and who is also getting the maximum allowance for incapacity and the maximum attendance allowance. This would be the minority of the 5,000. I do not have the exact proportion.

Senator Phillips: What will be the average allowance for those under exceptional incapacity allowance, the average grant per year?

Mr. Hodgson: The intention of the bill, Mr. Chairman, is that the exceptional incapacity will be graduated in figures up to \$2,400. No one has yet assessed the individual cases and no true average can be found yet, but one might surmise that the average will be close to half of \$2,400.

Senator Phillips: How many receive the attendance allowance? Surely someone in the department must know how many of the 5,000 are receiving it.

Mr. Hodgson: Perhaps the chairman of the Pension Commission can answer that one.

Mr. T. D. Anderson, President, Canadian Pension Commission: I cannot give you the exact figure. Are you speaking of those receiving the maximum?

Senator Phillips: I would like to know the number given the maximum.

Mr. Anderson: I would estimate it to be somewhere in the region of 200 people.

Senator Phillips: That is 200 out of the 5,000.

Mr. Anderson: If you are speaking of the maximum attendance allowance, that is correct.

Senator Phillips: This is presenting of course the most favourable side of the picture. I suppose it is only human to do that. I would still like to know what the average is to be received. Surely in the department when you are drawing up the legislation, which you have had since 1965, you must have made a projection of some type. What will be the average income for a veteran drawing exceptional incapacity allowance?

Mr. Anderson: In the first place he would have to be in a 100 per cent tax bracket. As the deputy minister said, the average will probably work out half way between.

Senator Phillips: Then it would be safe to say that the actual average will be \$5,400 as opposed to the \$9,000 given in the minister's statement.

Mr. Anderson: I would not like to answer yes to that, because I am afraid I have not had an opportunity to work that out.

Senator Phillips: Do you expect it to be any more?

Mr. Anderson: It is a figure incidentally which has not been worked out yet. I am not in a position to give a categorical yes or no.

Mr. Hodgson: Mr. Chairman, if it should be the case that this person was receiving 100 per cent pension and receiving half of the other two, he would then be receiving \$4,464 plus \$1,500, plus \$1,200.

Senator Phillips: You are getting back to the 200 or 5,000? I am trying to establish for the \$4,800 that remains.

Mr. Hodgson: What I was trying to do was to assume that the people would get half as much as stated in the minister's statement, which would be very much more than 200 people.

Senator Phillips: If I understood Mr. Anderson correctly, you have 200 people drawing attendance allowance.

Mr. Anderson: This is an estimate. I would not say that it is a completely accurate figure.

Senator Smith: It is a case where you will not be able to get any kind of an accurate figure until you have tested all the cases which will not be reassessed under this proposed legislation.

Mr. Hodgson: This is true in regard to the exceptional incapacity allowance. We know, for example, that the average will not be just \$400 and \$2,100. The margin of error cannot be that wide and \$1,200 is perhaps not a bad figure.

Senator Smith: \$1,200 for an average then.

Mr. Hodgson: For exceptional incapacity and one-half of the attendance allowance, which would be \$1,500 plus the 100 per cent pension. This would give a total of \$7,164, non-taxable, instead of the \$9,864.

Senator Smith: Let us take an average figure and have a comparison between what the situation was as of April 1 last year or before this new proposal comes into effect.

Mr. Hodgson: First of all, the 100 per cent pension would be \$4,056.

Mr. Anderson: Yes, under the new schedule.

Mr. Hodgson: \$4,056 presently for a married 100 per cent pensioner. Then, whatever one wishes to put for the attendance allowance, either the full amount or half amount—\$1,500. This gives a total of \$5,556. There is no exceptional incapacity allowance at the moment.

Senator Smith: We are coming quite a long way from what the legislation has been up to this time in the possibilities as well as the actions.

Mr. Hodgson: It is a maximum of \$200 a month exceptional incapacity plus, of course, a 10 per cent increase in basic rate of pension.

Senator Inman: This is for a married man without children. What about a married man with children?

Mr. Hodgson: There is a slight amount added with regard to the number of children. Under the act as it now stands a 100 per cent pensioner would receive for one child, \$408 a year and for two children, \$720 a year and each additional child an additional \$240 a year.

These rates are to be increased also by 10 per cent under a separate piece of legislation to be effective from April 1.

Senator Inman: How much more is that from what they are getting now?

Mr. Hodgson: It is 10 per cent in the case of one child which would increase the \$408 a year to \$449 a year.

Senator White: Mr. Anderson, of the 5,000 veterans who get 100 per cent, are there any who get no assistance allowance at all?

Mr. Anderson: Yes, there are some.

Senator White: Could you say roughly how many of the 5,000 have no other payments over their 100 per cent pension?

Mr. Anderson: These figures are available but I am sorry I do not have them with me here.

Senator White: Could you guess?

Mr. Anderson: There might be more who received no additional allowance.

Senator White: Then you are down to a very low number of people.

Mr. Anderson: When you are talking about those receiving the maximum, it is not very much.

Senator White: Am I correct that only the veteran who receives the maximum would get the assistance of the special benefits?

Mr. Anderson: Not necessarily. The only requirement for the exceptional incapacity allowance is that, first of all, he should be 100 per cent pensionable. In most cases I would say he would get the maximum if he is exceptionally incapacitated.

Senator Belisle: Would someone inform me, out of that 5,000 have we any women veterans receiving benefits with 100 per cent disability?

Mr. Anderson: Yes.

Senator Inman: Would a pensioned widow come under the same allowance?

Mr. Anderson: This does not apply to widows.

The Acting Chairman: Are there any more questions on this exceptional incapacity clause of the brief?

Senator White: Mr. Chairman, if you are finished with that I would like to ask Mr. Hodgson two questions. If you look at page 24, subsection (2) the very last words, "have any assessable disability". Would you say the word "any" would include disability as one, two, three or four per cent?

Mr. Hodgson: I am under the impression that the minimum assessment is five per cent.

Senator White: Does that clause mean that any Hong Kong veteran, who has a disability at one, two, three or

four per cent would then receive a 50 per cent disability pension? Is that the correct interpretation of the word "any"?

Mr. Hodgson: Yes, that is correct.

Senator White: Then Mr. Hodgson, in Supplementary Estimates (c) there is a schedule for the increase in pensions set out in 21 classes. Class 21 is: "Disabilities below 5 per cent—All ranks—A final payment not exceeding \$378.00". My suggestion is that there should be some kind of an amendment made to clause 2 to the effect that the provisions of Class 21 will not apply, because at one place you say it is going to be 50 per cent, and in another place you say that if the disability is below 5 per cent there is a final payment of \$378. It may not be necessary, but I think there are two different meanings.

Mr. Hodgson: Mr. Chairman, the purpose of subsection (2) on page 24 of the bill is to make a special arrangement with regard to those veterans who are members of the Hong Kong Forces and other prisoners of war of the Japanese. It is to say that these people had such an experience as prisoners of war under the Japanese that it is very difficult to assess them. It is for this reason that if they have any disability at all the bill proposes to grant disability assessed at 50 per cent which enables them to pass on a pension to their widows if they should die. This subsection does not apply to the many other veterans who might have a one per cent assessment.

Senator White: Would not this bill and the present act be in conflict if all pensions related to what you call Schedule A which distinctly says that all disabilities below 5 per cent will only get \$378.

Mr. Hodgson: Mr. Chairman, the legal officer felt this subsection indicated clearly this was a special deal for a special group of people, and there was no conflict.

Mr. Anderson: I would like to answer that. If you look carefully at paragraph 2, you will note that it says, "A pension in an amount equal to the pension payable for a disability assessed at fifty per cent..." You are not assessing the man at all really, but simply paying an amount equivalent to a 50 per cent pension.

Senator White: Mr. Anderson, could you give an example of the amounts paid for one, two, three or four per cent disabilities?

Senator Smith: How much money is involved?

Mr. Anderson: The amount payable to anything under five per cent is set forth in the schedules.

Senator White: Mr. Hodgson, in respect of the section dealing with the Hong Kong veterans, which provides for a payment to a widow whose husband died before this act came into effect, was there any discussion or consideration that such a widow would have her pension paid perhaps not retroactive to the date of the death of her husband, but retroactive to a reasonable time? Suppose he died five years ago. Now, would you not think her allowance should date back some short distance anyway?

Mr. Hodgson: That was considered along with a variety of other possible permutations. The decision was made to draft the bill in this form.

Senator Phillips: May I interrupt and ask what procedure we are going to follow? Are we coming to the bill later on?

The Acting Chairman: We are still on this "incapacitated" section of the brief.

Senator Thompson: We are interested in knowing how many of the Hong Kong veterans are left. A large number of those unfortunate fellows have since died.

Mr. Anderson: I have that figure; it is 1,217.

Senator White: How many Hong Kong veterans now receive a pension?

Mr. Anderson: There are only about seven or eight who need not some sort of pension. Probably the only reason they have not is because they have never asked for anything.

Senator Inman: I know of widows of these pensioners who need an attendant and who certainly suffer a loss of income at their husband's death. They require a woman or a nurse in attendance all the time; they cannot move from a wheel chair, dress themselves or go to the bathroom. Should not some consideration be given to such cases?

Mr. Hodgson: The legislation as it stands provides attendance allowance in respect of the veteran, but not in respect of other persons.

Dr. H. Richardson, Chief Medical Adviser, Canadian Pension Commission: The awards under the Pension Act are in respect of members of the forces and in respect of the disabilities needing an attendant, or the incapacity of members of the forces. The widow of a member of the forces, if not herself a member of the forces, is not a person to whom or in respect of whom disability is pensionable. People who depend upon members of the forces and are in poor health and necessitous circumstances, including a wide range of people such as wives, children, parents, and so on, are not provided for under the act in respect of their own disability.

Senator Inman: I certainly think they should be.

Senator Phillips: I tend to agree with you, because in many of these cases when the husband's death was attributed to service causes he would have been in a position to assist her. Now she is left with the one income, out of which she has to provide an allowance for an attendant. I think it is an excellent suggestion.

I realize that from the legal standpoint it is not included in this bill, but I see no reason why the committee should not make a recommendation that consideration be given to this aspect.

Senator Inman: There probably would not be very many.

The Acting Chairman: Dr. Richardson, you said that there are only about six or seven Hong Kong veterans not receiving a pension. How many widows are there?

Dr. Richardson: We expect that approximately 37 widows of Hong Kong veterans would benefit under this section.

Senator Phillips: I do not wish to harp on this, but I am concerned by the fact that the attendance allowance is included as income. As members of the Senate we receive an allowance which is not included in our income. I wonder what the veterans' organizations think of this? Do they consider the allowance to be part of income, or are they opposed to it?

Mr. Chadderton: We have never considered attendance allowance to be part of the pensioner's income as indemnification for his disability. In that connection recommendation No. 87 of the Woods Report recommended that attendance allowance not be considered part of pension. In the evidence given to the Standing Committee on Foreign Affairs on September 18, 1969, Mr. Ward of the department advised that this recommendation was accepted by the Government.

Therefore we were greatly surprised to see that in totalling the amount which a seriously incapacitated veteran would receive, \$13,600 including the income tax concession, the department and the minister include that figure of \$3,000. That money is encumbered income paid to the seriously disabled veteran so that he can hire attendants. In fact, its origin was that patients were discharged after World War I and in lieu of the department looking after them they received money to hire nurses. In many cases the money is given to the wife, but the fact that if she has to stay at home to look after her husband she is deprived of work outside must be considered.

We dispute the inclusion of that \$3,000 attendance allowance as part of the veteran's income as indemnification for his disability.

The Acting Chairman: It is an expense allowance, because he has these additional expenses.

Mr. Chadderton: Yes, it is an encumbered expense allowance; it is gone before he even receives it. There are only 200 or so of these involved, as Mr. Anderson has said, who are so seriously disabled that they require full time attendance at home. He certainly has to hire an attendant with the allowance, or his wife does it. He also has to pay for many other services, such as snow shovelling, which he can no longer do himself.

The Acting Chairman: Mr. Chadderton, have you anything further to add respecting this section of the brief.

Mr. Chadderton: Without becoming involved in an argument, Mr. Chairman, I do feel obligated to say one more word on this question of prostheses. We continually hear different definitions of it. I happen to be a member of the Canadian, United States and International Associations of Prosthetics. When they speak of prostheses they are referring to artificial limbs and prostheses of that

nature. Even braces are not considered to be prostheses any more but, orthoses.

We are afraid that if the commission means a pace-maker, which helps the man and is medical, naturally his disability is lessened, but if the legislation means that by using a pair of artificial legs this man will or may receive less incapacity allowance than a man who does not or cannot use his artificial legs, then we have to say that the emphasis has been placed on entirely the wrong motive. We say that the seriously disabled man should be encouraged to wear his prosthesis and if he does he certainly should not stand to lose part of his exceptional disability allowance. This enters semantics again, but if the department has in mind artificial limbs which, per se, is the general connotation of prostheses, we have already placed our views before the committee: we object strenuously.

Mr. Hodgson: The word prosthesis is used in the bill in the dictionary meaning of the word and therefore would apply to all kinds of prostheses and not merely to one kind.

The Acting Chairman: Are you referring to a medical dictionary, or to an ordinary dictionary?

Mr. Hodgson: The ordinary dictionaries which are used by the jurists.

Senator Thompson: Does this mean that a veteran who is encouraged to wear a prosthesis and does so will lose part of his pension?

Mr. Hodgson: Section 59 (4) provides that if he unreasonably declines to use a prosthesis the commission may reduce his exceptional incapacity allowance. However, subsection (3) provides that if by treatment or prostheses his actual disability, incapacity, is lessened, the commission may take this into account, as against the person who just could not wear one even if he wanted to.

Senator Sullivan: How often does that occur? Have you any idea of the frequency, of the number of people who will not wear the prosthesis when they are disabled?

Mr. Hodgson: There is a section in the Pension Act now which deals with the point and perhaps that would give it a lead. Can Mr. Richardson deal with it, perhaps?

Dr. Richardson: I am not aware of any penalty having been actually applied to veterans by reason of their refusing to wear a prosthesis. We have examined the files of several hundred pensioners who are totally disabled and who appear to be applicants for this. We did not encounter a single case in which there was the slightest suspicion of refusal, nor the slightest suspicion that this section might ever be invoked and in fact it seems to be very unlikely that it ever will be invoked.

Senator Sullivan: On the basis that some psychiatrist is of the opinion, or is it only on the veteran himself?

Dr. Richardson: It is based on an examination of the facts and records. The records do not proscribe people who unreasonably refuse.

Senator Sullivan: And not on the opinion of the psychiatrist who tells him not to wear a prosthesis? I would like to know the answer to that one.

The Acting Chairman: Are there any more questions on the brief? If there are no more questions, I will express thanks to Mr. Chadderton and Mr. Hanmer for the brief and the information given us in reply to questions.

Honourable senators, from there, we will proceed with the bill itself.

Senator Phillips: In expressing thanks, Mr. Chairman, I would like it noted that my amendments would meet their objections.

The Acting Chairman: Honourable senators, this bill is a rather lengthy bill and there is no controversy except for two or three clauses. Would it be agreeable that we leave clause 1 open for the general questioning, and then proceed with those clauses where members have points to raise, instead of going through it clause by clause?

Hon. Senators: Agreed.

The Acting Chairman: Senator Phillips gave notice of amendments that he had in mind at our last meeting, and he was good enough to provide us with copies of these amendments, in advance.

Senator Phillips: Mr. Chairman, before that, may I ask one or two questions? In studying the bill, certain things rather impressed me. I would like to refer to page 11, which deals with subsection (3), covering subsections (5) to (7) of section 13 of the act. It refers to the disabling condition which was apparent at the time or would be apparent to an unskilled observer on examination of the member at that time.

When I read that, honourable senators, I say that everyone knows there are different opinions amongst medical and even dental officers in the service, and I wonder what is meant here by a non-skilled observer examining a member at the time?

The Acting Chairman: It is at the top of page 11.

Dr. Richardson: An example might be the absence of an external ear. We believe this defect would be obvious to an unskilled observer, that is, a person of average intelligence who looked at that side of the man's head.

Senator Phillips: Fine. I understand the purpose of this now. The next is page 13, section 28A, which deals with an additional pension for loss of a paired organ or limb. This refers to a clause to which I have no objection, but I have just one question. There is an increased allowance, providing an increased pension of 50 per cent. Does that continue after the death of the veteran or does the widow revert to the previous rate?

Mr. Anderson: The rates payable to the widow and the rates payable to the veteran are in two separate schedules. The only relationship between the widow's pension and the veteran's pension is, if the pensioner at the time of his death received a pension of 48 per cent or more, the widow is then entitled—if she is otherwise

entitled, of course—to a widow's pension under schedule B. So the two are not really related.

Senator Phillips: If there is an increased pension for the loss of another leg, it does not continue after the death?

Mr. Anderson: That is correct.

Senator Phillips: On page 15, on the proposed rent subsection 5, it refers to a claim for specially made wearing apparel. He is entitled to an allowance of \$108 per annum. It is my understanding that at present someone requiring custom made boots gets them provided by the department. Will that be affected by the allowance of \$108?

Mr. Richardson: There would be an allowance under this section only if there were evidence of abnormal wear of the clothing worn by this pensioner. The facts are ascertained in each case.

Senator Phillips: I am still not quite clear. If someone has to wear a boot that is filled up, is he now required to purchase that out of the \$108?

Mr. Richardson: No, sir.

Senator Phillips: My next question is on the so-called survivor's benefit. I have two questions there. The first begins at the top of page 20. This refers to the fact that a widow of a veteran who is remarried and is now rewidowed or divorced or legally separated, can be reinstated under the pension of the first husband, but the act states that she must be dependent.

What would you consider to be a dependent person? I am thinking of a case where she may be making a small amount of money and getting a war veterans allowance, bringing the income up to a certain stage. Is that widow considered to be dependent, under this legislation?

Senator Inman: If she remarried I would think so.

Mr. Reynolds (Director, Legal Branch, Department of Veterans Affairs): "Dependent condition" is defined on page 2 of the bill, clause 2(2)(g).

Senator Phillips: Under the section, then, would you consider a widow receiving War Veterans Allowance to be in a dependent condition?

Mr. Reynolds: I think they would have to elect which they were going to proceed under the Pension Act or the War Veterans Allowance Act. I doubt if they could proceed under both.

Senator Phillips: You disturb me, Mr. Reynolds, by saying that you "think". I would like to have it a bit more definite than that, please.

Mr. Reynolds: Well, I say if they get War Veterans Allowance they are not in a dependent condition.

Senator Phillips: That is the point I wanted to establish. That will then create a situation where one widow, getting War Veterans Allowance at the present time, will be unfairly treated with respect to another who can revert to her first husband's pension.

Mr. Reynolds: She can elect. She does not need to apply for War Veterans Allowance if she is eligible to reapply as a widow for her late husband's pension.

Senator Phillips: Let me attempt to clarify the situation a bit more, then, Mr. Reynolds. After all, there are hundreds of widows who have remarried veterans. If the second husband has since died and the widow is receiving War Veterans Allowance, then, as a result of a probably small pension received by the second husband, I am concerned that such widows are going to be left in a far inferior position to that of those who have married non-veterans and have become widowed and can thus revert to their first husband's pension.

Mr. Reynolds: In my opinion, a widow of a pensioner who then marries a non-veteran and becomes widowed again would not be eligible for War Veterans Allowances as a widow.

Senator Phillips: That is what I am saying. But under my interpretation of this act she can revert to her first husband's pension.

Mr. Reynolds: When a second husband who has a 48 per cent pension or more dies, if his wife was drawing widow's pension before she remarried then she can apply, if she is in a dependent condition, to have the widow's pension reinstated.

Senator Phillips: I should like to suggest to the Pension Commission that this is an aspect that is going to have to be studied further in order to make sure that there is no discrimination between the two groups.

The Chairman: Mr. Reynolds, what would be the position of a veteran's widow who marries a non-veteran and becomes separated. Can she revert back? And what if she is divorced?

Mr. Reynolds: If she is divorced she can reapply for her first husband's pension. If she is just separated she cannot.

Senator Phillips: I am interested in Part V of the act, on page 25. I referred to this part in my remarks, when I said that it is unreasonable to reduce the allowance, and it is my intention to move an amendment.

I move that subsection (3) of section 59 be eliminated and that the subsequent subsections be renumbered. This would have the effect of removing the authority of the Pension Commission to reduce to half the exceptional incapacity allowance from the amount originally granted, if the veteran learns to use a prosthetic device. I think it is very unfair to say to a veteran who has suffered a disability that since he has now learned to use an artificial device he should therefore be penalized.

Senator Smith: Mr. Chairman, on a point of order, in my opinion, as a non-legal person, there would be at least some doubt as to the capacity of the Senate to deal with an amendment of that kind. In that respect I would ask for the opinion of the law clerk.

The Chairman: Yes. I was going to ask our law clerk to give us his opinion on this amendment.

Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel: Mr. Chairman, honourable senators, I am a war veteran. I say that merely by way of preamble. I am a war veteran, however, and I have sympathy for war veterans.

There are peculiar difficulties in reaching an official decision on any of these three amendments suggested by Senator Phillips, because in these cases the question of law depends ultimately on a question of fact. Let me put it this way: the Ross Report has been the classic position taken by the Senate and has been reiterated many times. The only safe course we can take is to rely upon the Ross Report, in my opinion. The Ross Report was adopted by the Senate and was based upon opinions expressed as long ago as 1918. The essential part of the Ross Report reads as follows:

That the Senate of Canada has and always has had since it was created the power to amend bills originating in the Commons, appropriating any part of the revenue or imposing a tax by reducing the amounts therein; but has not the right to increase the same without the consent of the Crown.

Now, what are the questions of fact involved in the three amendments suggested by Senator Phillips?

The Chairman: Shall we confine ourselves to the first amendment?

Senator Smith: Yes, what is said with respect to the first amendment may or may not be applicable to the other two amendments.

Mr. Hopkins: Dealing with the first amendment, then, I should like to ask the departmental officials what their opinion is in the light of the evidence submitted by Dr. Richardson to the effect that he knows of no case where this might apply. Or perhaps that evidence was in connection with subsection (4).

Mr. Reynolds: It was subsection (4), I think.

Mr. Hopkins: Reverting to subsection (3), then, it depends on that question of fact. We can do everything in the Senate except that we have no licence to print money. We cannot pass out money. Much as we might like to, that is one of the things that, in my opinion, we cannot do. There are close cases, and this may be one of them. I would ask the departmental officials to tell the committee whether this would increase the charges upon the people.

Senator Smith: Not whether it would but whether it could increase the charges upon the people by the very terms of the amendment. Would you agree with that correction, Mr. Hopkins? Because they do not perhaps know yet. They have to examine all these cases.

Mr. Hopkins: I should like to hear Mr. Reynolds' reply.

Mr. Reynolds: I am not a medical man, Mr. Chairman, but as a layman in medical matters it would seem to me that if a person did not undergo treatment and if this section were deleted from the bill it would be likely to increase or could increase the amount of the allowance that he would paid.

Senator Phillips: Are you suggesting, Brigadier Reynolds, that this section is in there for the purpose of reducing the exceptional incapacity allowance? When you say that, you must be implying that the exceptional incapacity allowance will not be paid in most cases.

Dr. Richardson: If a condition is reduced by treatment, then it will reduce the amount of the allowance. It would be expected that a lesser allowance would be paid when a condition is improved by treatment and there is less disability. This section provides for that.

Senator Phillips: If I may address a question to the Law Clerk: this is not a taxation bill and I would like him to explain to me, from his lofty heights, the manner in which he sees this becoming involved in a money bill. As he knows, in the Ross Report it was generally accepted, and I have heard a good many senators state this, including Government leaders, that the interpretation applied to money bills only.

Mr. Hopkins: It applies not only to tax measures, but to appropriation measures. Never in the history of the Senate have we amended an appropriation bill as such. Therefore, in passing this bill, in effect we are authorizing the expenditure of the money. This has been the attitude taken in many committees in which I have participated, unless the particular amendment does not have the effect of increasing the charges upon the people.

Now, the Pension Act, although it is designed to help the veterans, nevertheless in its pith and thrust involves the expenditure of money, some sections more than others. It is very difficult, as I said at the beginning, to draw a very fine line.

The Statistics Act, for example, does not have the thrust and burden of spending the taxpayers' money. Maybe I am a conservative in these matters, with a small "c", but I would entertain a measure such as that if it were shown to me that it would cost the Treasury money.

Senator Phillips: Has the department shown you that it is going to cost money?

Mr. Hopkins: If it is not going to cost money, we can do it.

Senator Sullivan: Mr. Chairman, in spite of all this legal repartee...

Senator Smith: It will save our time if we can settle this point of order before we go into the merits.

Senator Sullivan: I intend to speak to the point of order.

Senator Smith: I wish you would keep to it.

Senator Sullivan: I speak here not as a member of the legal fraternity, but as a surgeon, which I have been for some period of time. Surely an individual who is suffering from a disability that is incapacitating and by some means of a surgical interference, which would probably have to be very drastic for that type of individual, has some improvement and alleviation of pain, is not going to

have his pension reduced. Is that the meaning of this section?

Mr. Hopkins: That is a question of policy; I would still like more clarification from the department as to what this amendment would mean in terms of money.

Senator Smith: That is the point I was making; I did not intend to interrupt my good friend, the doctor, but he was speaking of the subclause rather than this point of order.

Mr. Hodgson: Perhaps it will be helpful if I explain that one might have a case where a person has a complete or serious incapacity and where by reason of treatment that incapacity is, shall we say, completely remedied, to take the extreme case. This subsection provides that in such a case the Pension Commission may in its discretion reduce the amount of the incapacity allowance, not the amount of the pension. This particular subsection does not refer to the amount of the pension, but that of the incapacity allowance. Therefore, if this section were not included that reduction would be impossible and increased expenditure would in fact take place.

Senator Macdonald: Is it your interpretation that any amendment which might indirectly have the effect of increasing costs to the Government would be out of order?

Mr. Hopkins: I would not like to say indirectly. However, we must be realistic about it. This is a bill which, if passed, will affect the revenues. Not necessarily this section, but the whole thrust and burden of the Pension Act is to extract from the public suitable amounts of money to pay the veterans suitable recompense, of which I am all in favour.

Senator Macdonald: But do we not arrive at the point where we must make a decision between directly and indirectly? Certainly this will not directly affect the revenue; that is not the purpose of the amendment. However, indirectly it probably would.

Mr. Hopkins: I do not wish to be dogmatic in this regard, because this matter has never been resolved by the Supreme Court of Canada; it has never got anywhere near it. It can only be considered on the merits from first principles. I have always taken the position that if it would increase a charge upon the people—and this is a close case because it might or it might not—but if it did it would at least be of doubtful constitutionality. Not being in the position of knowing whether it would or it would not, that is about as far as I can go.

Senator Phillips: May I ask the Law Clerk then how he relates his viewpoint to the statement made by the chairman of the Pension Commission recently, that they do not normally spend the full amount of the money provided by Parliament, which is provided yearly? I fail to see how this will increase taxation when we have already had the commission state before this committee last week that they do not spend their full amount.

Mr. Hopkins: I have considered that question; that is appropriation, not taxation, of course. It sometimes hap-

pens that there is enough money left to take care of certain of these matters.

Senator Phillips: It is my argument that if the appropriation is already made by Parliament we are not increasing it, but giving directions as to how the appropriation may be spent.

Mr. Hopkins: If that is the fact in this case, I am still in the hands of the department. I thought they said a few moments ago that it would be the opposite.

The Acting Chairman: Honourable senators, we have had quite a discussion on this point.

Mr. Hopkins: I think that Senator Phillips' point should be answered and dealt with by the department. I am speaking in general terms; it may well be that this item would not require any further appropriation whatever. In fact that case it would be a matter of meritorious decision by this commission.

Senator Smith: May I ask the Law Clerk, if this amendment involved the expenditure of money as a result of it having been passed by the Senate and then sent over to the House of Commons, would that be beyond the capacity of the Senate, to change a bill, with the effect of increasing expenditure of money? Whether or not the moneys are in the till today, the point is that we will not by virtue of changing the bill the amount that would be taken out of the till. Therefore it involves the expenditure of money.

I have been brought up in that Philadelphia legal school which tells me we have not got that power.

Mr. Hopkins: I have always been a conservative constitutionalist; I think everyone knows that. However, there are close cases and I would not go beyond saying that if I have any answer to this question, it is that the amendment is of doubtful constitutional validity, but I could not absolutely rule it out.

Senator Smith: It is obvious that we should ask Mr. Hodgson to put it in as plain language as he honestly can: would this section involve the extra expenditure of moneys?

Mr. Hodgson: I think departmental officials would reasonably expect the amendment would increase the actual cash outlays, not only in the coming year, but in subsequent years. By how much they would be increased, one can only speculate.

Senator Inman: What would be the position of someone who had treatment, for instance, of ulcers of the stomach when they left the service? This is a case of which I have knowledge. A man had an operation and apparently recovered and seemed all right for some years and then there was a recurrence of the ulcer condition. Could he be reinstated?

Mr. Hodgson: Yes, any veteran can be re-assessed both in relation to his pension disability and, if this came into effect, possibly also in relation to allowance for exceptional incapacity.

Senator Sullivan: I have one short question. Will the Senate not have to deal with money matters when some of the legislation comes over for the increase of salaries or pensions for themselves?

Mr. Hopkins: Yes, but we could not increase our own salaries very easily.

Senator Smith: The Senate has not got the power to initiate such legislation. We can reject it when it comes over to us from the other side.

Senator Sullivan: That is a shoe on another foot.

Senator Belisle: Could the Senate not initiate bills in relation to its own staff, without going to the House of Commons?

Mr. Hopkins: That is authorized by existing statutes.

Senator Phillips: We have no authority to initiate taxation. I very strongly of the view that, in initiating taxation, it is a separate appropriation from this bill altogether, and this is an important thing to remember in dealing with this subject.

Mr. Hopkins: I would not say "taxation" but "appropriation".

The Acting Chairman: I think I have to cut off discussion on this, as we have two other amendments, and we do not seem to be making any progress. There are two courses. One is to make a ruling on the amendment, to rule it out, or rule it in and have a vote on it. I am in an embarrassing position because I have not got a firm answer of fact on which to rule. Since there is an element of doubt, I think the benefit should go to the mover and I am prepared to rule it in technically and take a vote. Those in favour say aye.

Senator Smith: What are you asking for, Mr. Chairman? If you make a ruling, as far as I am concerned I do not appeal your ruling and—

The Acting Chairman: I am ruling the amendment in. I do not have firm grounds on which to rule it out. There is a doubt.

Senator Inman: Which amendment?

The Acting Chairman: Senator Phillips moved that subsection 3 of section 59 be deleted and the following subsections renumbered.

Senator Smith: Let us have the question. I do not want to turn down the chairman's ruling at all. What is the question?

The Acting Chairman: The question is on Senator Phillips' amendment with respect to section 59. He moved that subsection 3 of section 59 be eliminated and the following subsections renumbered. Have you all heard the question? Are you ready for the question?

Senator Smith: Mr. Chairman, Just because I still do not agree that we have the power to do such a thing, and not for lack of sympathy, which I hope is understood by everybody in this room, I must register the fact that I intend to vote against it.

Senator Kinnear: Mr. Chairman, would you not consider Mr. Hodgson's answer a firm answer?

The Acting Chairman: He said he could "reasonably expect" and that was the word he used. I have to balance that against Mr. Hopkins decision that there was a doubt and there was further doubt as to whether it would apply to this particular expenditure or to the appropriation as a whole. So it is very complex. I would prefer to have a clearcut decision one way or the other and then we would dispose of it.

Some hon. Senators: Question.

The Acting Chairman: Those in favour please raise their hands. Those against? I declare the amendment lost.

Senator Phillips: Mr. Chairman, I had intended to move that subsection (4) also be eliminated, but in view of the vote on subsection (3) I will skip that and move to clause 87. This is one which has concerned veterans organizations for a great many years and, as explained before the committee last week, veterans organizations are concerned that we are placing the onus on the veterans to provide a "preponderance of evidence". Therefore, I move:

That lines 13 to 19 on page 39 be removed and the following substituted therefore:

"And where the evidence has been considered and all reasonable inferences drawn in his favour, and any doubt exists as to whether the applicant or member has established his case, such applicant or member shall be entitled to the benefit of such doubt, in that his claim may be allowed even though he may not have established it by a preponderance of evidence."

Honourable senators, this is re-establishing the principle that the veteran not be required to provide a preponderance of evidence; and I would ask your support for this amendment.

Senator Inman: That is a saving clause.

Mr. Hodgson: This is a technical matter and I wonder whether Mr. Reynolds might comment on the legal aspect of it.

Mr. Reynolds: Mr. Chairman, as Mr. Chadderton stated at the last meeting, an effort has been made over the last forty years to find words to include in this section, which we are now considering, which would ensure that applicants for pension receive the benefit of the doubt in the adjudication of their claim. The difficulty encountered in the present section 70, that is, the benefit of the doubt section which is now contained in the act, is that it is extremely difficult to interpret. Witnesses appearing before Mr. Justice Woods and his committee when they were holding their hearings, were asked to define what they understood section 70, the benefit of the doubt section, to mean. Practically all the interpretations given varied, that is, it meant a different thing to one person than to another. That was the difficulty with the old section 70. It was ambiguous and confusing.

In drafting clause 87 of Bill C-203, an effort was made to make it abundantly clear that the applicant was enti-

tled to the benefit of the doubt. A further effort was made to word the section in such a way that its intent was clear and unambiguous to pension applicants, their representatives, and the adjudicators.

When clause 87 was being drafted, very careful consideration was given to adding words very similar to the words proposed in the present amendment. The words in the present amendment are very much the same as the words that appeared in the report of the standing committee after they considered the Woods report, that is, that the claim may be allowed even though it may not have been established by a preponderance of evidence. That is really the effect of this amendment.

After the draftsmen had considered at great length whether this principle of preponderance of evidence should be introduced into the Pension Act, a decision was reached that the addition of these words did not in any way assist the applicant. The reason for this decision is that the operative portion of both clause 87 as drafted and the proposed amendment—the operative portion of both the amendment and the section as drafted—is “any benefit of the doubt”. That is what the applicant has to convince the adjudicators of: that there is doubt—any doubt.

This is the issue that the adjudicator must direct his mind to when he reaches the stage of the adjudicating process. The amount or quality of evidence required to create any doubt is less than the amount of evidence required to establish a preponderance of evidence. That is, the principle of the preponderance of evidence has never had anything to do with pension adjudication to this date. And to establish a case on the basis that there is a doubt is easier to do than to establish it by a preponderance of evidence. It requires better and more evidence to establish a thing by a preponderance of evidence than it does to create a doubt.

Therefore, if the adjudicator finds that he has a doubt after considering all the material before him, that doubt must be resolved in favour of the applicant. It is immaterial whether or not that doubt arises from the production of more or less than a preponderance of evidence. So long as there is a doubt in the mind of the adjudicator the applicant is entitled to the benefit of that doubt.

If the evidence was less than a preponderance but failed to create any doubt, then even if the proposed amendment was adopted the applicant's claim would not be allowed. That is, he has to create the doubt, regardless of the preponderance of evidence.

Without the proposed amendment, if the evidence produced is less than a preponderance but does create a doubt, the claim would be allowed pursuant to clause 87. That is, so long as there is a doubt created it does not matter whether he has established his case by a preponderance of evidence or by less than a preponderance of evidence. It is the creation of the doubt that is the important factor in establishing the case.

The concept of the preponderance of evidence has not been used in pension adjudication cases in the past and the suggestion is that its introduction in the Pension Act at this time might serve to confuse the relatively simple

issue of determining whether or not there is any doubt. It has been suggested that clause 87 as drafted in Bill C-203 clearly and simply sets forth what an applicant is required to do to establish his claim, and sets forth the duty of the adjudicator of deciding it to ensure that the applicant does in fact receive the benefit of the doubt.

Mr. Hopkins: May I just ask Brigadier Reynolds a question, Mr. Chairman? Do I understand from the nature of your answer, sir, that you see no financial implications?

Mr. Reynolds: I do not see that this amendment changes the effect of the section in any way at all.

Senator Phillips: Mr. Chairman, we have all received correspondence from the National Association of Veterans Organizations, and I think we should now hear any comments that their representatives may wish to make in answer to what Mr. Reynolds has just said.

Mr. Chadderton: Mr. Chairman, I am in a position where I can only refer your committee back to the voluminous evidence of the Woods Committee under the chairmanship of the honourable Mr. Justice Woods. I was secretary of that committee, and in my opinion Mr. Justice Woods and his colleagues would not at all agree with the comments which have just been made by Brigadier Reynolds.

Having said that, I speak now as the representative of the veterans organizations. In our opinion the veteran has always had the benefit of the doubt. It has been in the legislation since 1930. I do not read anything new in Brigadier Reynolds's comments when he says that this new section of the act would give the veteran the benefit of the doubt. I think that in 1930 the government intended to give the veteran the benefit of the doubt. Where this legislation has fallen short over some 40 years is that although the veteran has had the benefit of the doubt, the enabling sort of clauses in the legislation were not such that that benefit of the doubt could in fact be given to him.

The approach which was taken by Mr. Justice Woods and his colleagues was, in my opinion, simply that the only practical way in which the Committee could see that the benefit of the doubt would actually be given to the veteran would be in the question of the preponderance of evidence.

I agree with Brigadier Reynolds when he says that it is more difficult to establish a preponderance than it is to establish a doubt. That is exactly what the Woods Committee recommendation was all about. It said that, if there is doubt, it shall be applied in the sense that the veteran shall not have to establish a preponderance, and, consequently, the adjudicator, in adjudicating a claim, even though he would come to the conclusion that the preponderance of evidence was in effect against the claim, if he found that there was a reasonable doubt, could say, “There is a reasonable doubt there and although I do not feel that the veteran has established a preponderance, I can still in all conscience approve his claim.”

So we simply come down again to semantics, and, as I say, it is not something that can be resolved in five

minutes. You have to go back and read the history of the "benefit of the doubt" aspect and see why it has failed.

That leads us to our conclusion that the present amendment is not going to do any more than the existing act. Unless you adopt the proposal as suggested by the Woods Committee, which was to lay it right on the preponderance line and say, if the veteran does not have a preponderance, but there is a doubt, the adjudicator is still free to approve that claim.

Senator Phillips: Mr. Chadderton, Brigadier Reynolds stated that he did not feel that the amendment improved the section very much from a legal point of view. This is very closely related to the recommendation of the Woods Committee. Does the National Council of Veterans Associations feel that it would improve their condition any by having it specified that there be not a preponderance of evidence?

Mr. Chadderton: Yes, Mr. Chairman, the national veterans organizations of Canada endorsed the Woods Committee recommendation in the first place. We were pleased to see the evidence put in front of the Committee on Veterans Affairs earlier to the effect that the Government endorsed this Woods Committee recommendation. Thus we were surprised when we saw that the new bill contained a less effective wording.

With respect to the motion you moved this morning—and I understand the gist of it, although I am just looking at it now for the first time—we feel that it would be a more effective legislative amendment than the one proposed in Bill C-203. How much more effective we do not really know. But our feeling is that the present benefit of the doubt clause in Bill C-203 does little more, if anything more, than the present section. We feel that this amendment would certainly do quite a bit more than that.

Senator Phillips: Thank you.

Senator Thompson: Mr. Reynolds, have you any further remarks to make in view of what Mr. Chadderton has just said?

Mr. Reynolds: I should like to point out that I do not think the amendment goes anything like as far as the Woods Report recommendation—that is, that a claim may be allowed even though the preponderance of evidence is against granting the claim. That goes a lot farther than the proposed amendment does. I do not think you can really relate the amendment with the Woods Report recommendation.

Senator Thompson: As I understand it from what Mr. Reynolds is saying now, the amendment is really superfluous; everything is covered in the clause as stated in the bill.

Mr. Reynolds: That is what I say, yes.

Senator Thompson: And with respect to an interpretation of preponderance of evidence—which has been a matter of concern for the veterans organizations—you feel that the difficulty they have had in the past has been clarified by the way this bill is now put.

Mr. Reynolds: Yes.

The Acting Chairman: How could there be a doubt, if a veteran has a preponderance of evidence? How would a doubt arise there? Every case has pros and cons, has it not? You have to weigh the evidence for and the evidence against.

Mr. Reynolds: As I said before, the principle of preponderance of evidence has no place in a pension adjudication. Lawyers talk about the preponderance of evidence, but here it is a question of creating a doubt. It is the benefit of the doubt we are concerned with. It is less difficult to prove the benefit of the doubt than it is to establish a point by a preponderance of evidence. I think that to introduce a concept of the preponderance of evidence confuses the simple matter of deciding whether or not there is any doubt.

Senator Phillips: But the amendment states, Mr. Reynolds, that the veteran may not have established it by a preponderance of evidence. I want to make it perfectly clear that he does not have to do that.

Mr. Reynolds: No, he does not.

Senator Phillips: That is all that this amendment does.

Mr. Reynolds: He never had to establish a case by a preponderance of evidence. There is no word about a preponderance of evidence anywhere in the Pension Act, and it is an expression that is rarely, if ever, used in pension adjudication.

Senator Phillips: I can present a host of people to you, Mr. Reynolds, who would not take the point of view that they did not have to present a preponderance of evidence. I still feel, and the veterans do, that this is a requirement. This amendment will only specifically state that a preponderance of evidence is not a requirement.

The Acting Chairman: Could I ask you, Mr. Reynolds, is it your opinion that the introduction of this new phrase "preponderance of evidence" into the act would be a disadvantage to the veteran claimant?

Mr. Reynolds: I think it can add to confusion due to the wording of the amendment, in which the commission or the adjudicating body may grant the case even though there is not a preponderance of evidence. They have a discretion. The introduction of the concept of preponderance of evidence might lead people to believe that the general rule was that a case had been established by that preponderance of evidence and even if there was less than a preponderance of evidence they could still grant. However, if they felt like it they did not need to grant. I say they never did have to prove a case by preponderance of evidence; all they had to do was create a doubt, not even a reasonable doubt, but a doubt.

The Acting Chairman: Are you ready for the question? Those in favour say aye? Those contrary, say nay?

In my opinion the nays have it. However, it is very close. Do you wish to have a show of hands?

Hon. Senators: Yes.

The Acting Chairman: Those in favour please raise your hands? Those against? I declare the amendment lost.

Are there any further questions?

Senator Thompson: There are no qualifications required by the bill for appointment of members to the Pension Board. I do not know if this is the general practice in an act, but I would hope on principle that the qualifications for representation on the board would give consideration first to experience in the armed forces. It should not be just one branch of the armed forces, although I am prejudiced towards the senior service. I believe it should be a balanced representation, emphasizing the Canadian armed forces, which I believe to be a fairly obvious remark. Those appointed should also be

very knowledgeable with regard to both the Woods committee and the whole background of this bill.

Senator Inman: I certainly support that.

The Acting Chairman: This question was raised at the last meeting and answered by Mr. Anderson.

Shall I report the bill without amendment?

Hon. Senators: Agreed.

The Acting Chairman: Thank you very much, senators, and, on your behalf, I thank Mr. Hodgson, Mr. Reynolds and his staff, Mr. Anderson and Dr. Richardson, for being present and for their assistance.

The committee adjourned.

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THIRD SESSION—TWENTY-EIGHTH PARLIAMENT
1970-71

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING SENATE COMMITTEE ON
**HEALTH, WELFARE
AND SCIENCE**

The Honourable CHESLEY W. CARTER, *Acting Chairman*

No. 5

WEDNESDAY, MARCH 17, 1971
THURSDAY, MARCH 18, 1971

Complete Proceedings on the following Bills:

Bill C-25 "An Act respecting Canadian Environment Week"
Bill S-11 "An Act to provide for the obtaining of information
respecting weather modification activities"

REPORTS OF THE COMMITTEE

(Witnesses:—See Minutes of Proceedings)

THE SENATE COMMITTEE ON HEALTH,
WELFARE AND SCIENCE

Chairman: The Honourable Maurice Lamontagne

The Honourable Senators:

Bélisle	Inman
Blois	Kinnear
Bourget	Lamontagne
Cameron	Macdonald (<i>Cape Breton</i>)
Carter	McGrand
Connolly (<i>Halifax North</i>)	Michaud
Croll	Phillips (<i>Prince</i>)
Denis	Quart
Fergusson	Robichaud
Fournier (<i>de Lanaudière</i>)	Roebuck
Fournier (<i>Madawaska- Restigouche</i>)	Smith
Gladstone	Sullivan
Hays	Thompson
Hastings	Yuzyk—(28)

Ex officio Members: Flynn and Martin

(Quorum 7)

Orders of reference

Extract from the Minutes of the Proceedings of the Senate, Tuesday, 16 March, 1971:

Pursuant to the Order of the Day, the Honourable Senator Macnaughton, P.C., moved, seconded by the Honourable Senator Robichaud, P.C., that the Bill C-25, intituled: "An Act respecting Canadian National Environment Week", be read the second time.

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Macnaughton, P.C., moved, seconded by the Honourable Senator Robichaud, P.C., that the Bill be referred to the Standing Senate Committee on Health, Welfare and Science.

The question being put on the motion, it was—
Resolved in the affirmative.

Robert Fortier,
Clerk of the Senate.

Extract from the Minutes of the Proceedings of the Senate, Thursday, March 4, 1971:

Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Hays, P.C., seconded by the Honourable Senator Denis, P.C., for the second reading of the Bill S-11, intituled: "An Act to provide for the obtaining of information respecting weather modification activities".

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Hays, P.C., moved, seconded by the Honourable Senator Denis, P.C., that the Bill be referred to the Standing Senate Committee on Health, Welfare and Science.

The question being put on the motion it was—
Resolved in the affirmative.

Robert Fortier,
Clerk of the Senate.

Minutes of Proceedings

Wednesday, March 17, 1971
(5)

Pursuant to adjournment and notice the Standing Senate Committee on Health, Welfare and Science met this day at 11:00 a.m.

Present: The Honourable Senators: Carter (*Acting Chairman*), Bélisle, Denis, Hastings, Inman, Kinnear, Macdonald (*Cap Breton*), McGrand, Phillips, Robichaud, Smith, Sullivan, and Thompson. (13)

The following Senators, not members of the Committee, were also present: The Honourable Senators Macnaughton and White.

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

On Motion duly put it was Resolved to print 800 copies in English and 300 copies in French of these proceedings.

The Committee proceeded to the consideration of Bill C-25, intituled: "An Act respecting Canadian National Environment Week".

The Honourable Senator Macnaughton, sponsor of the Bill, was heard by the Committee in explanation of the said Bill.

On Motion of the Honourable Senator Thompson, it was Resolved to report the said Bill with the following amendments:

1. *Page 1, clause 1:* Strike out the word "National" in line 5.
2. *Page 1, clause 2:* Strike out the word "National" in line 9.
3. *In title:* Strike out the word "National".

At 11:10 a.m. the Committee adjourned.

ATTEST:

Denis Bouffard,
Clerk of the Committee.

Thursday, March 18, 1971
(5)

Pursuant to adjournment and notice the Standing Senate Committee on Health, Welfare and Science met this day at 10:30 a.m.

Present: The Honourable Senators: Blois, Carter, Denis, Inman, Kinnear, Macdonald (*Cape Breton*), McGrand, Michaud, Smith, Thompson—(10).

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

On Motion of the Honourable Senator Blois the Honourable Senator Carter was elected Acting Chairman.

On Motion duly put it was Resolved to print 800 copies in English and 300 copies in French of these proceedings.

The Committee proceeded to the consideration of Bill S-11 intituled "An Act to provide for the obtaining of information respecting weather modification activities".

The following witnesses were heard in explanation of the Bill:

Mr. Eymard Corbin, M.P., Parliamentary Secretary to the Minister of Fisheries and Forestry;

Mr. D. J. Wright, Liaison Meteorologist, Department of Fisheries and Forestry.

It was Resolved to report the said Bill without amendment.

At 11:20 a.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Denis Bouffard,
Clerk of the Committee.

Reports of the Committee

Wednesday, March 17, 1971.

The Standing Senate Committee on Health, Welfare and Science, to which was referred the Bill C-25, intituled: "An Act respecting Canadian National Environment Week", has in obedience to the order of reference of Tuesday, March 16, 1971, examined the said Bill and now reports the same with the following amendments:

1. *Page 1, clause 1:* Strike out the word "National" in line 5.

2. *Page 1, clause 2:* Strike out the word "National" in line 9.

3. *In title:* Strike out the word "National".

Respectfully submitted.

Chesley W. Carter,
Acting Chairman.

Thursday, March 18, 1971.

The Standing Senate Committee on Health, Welfare and Science to which was referred Bill S-11, intituled: "An Act to provide for the obtaining of information respecting weather modification activities", has in obedience to the order of reference of March 4, 1971, examined the said Bill and now reports the same without amendment.

Respectfully submitted.

Chesley W. Carter,
Acting Chairman.

The Standing Senate Committee on Health, Welfare and Science

Evidence

Ottawa, Wednesday, March 17, 1971.

The Standing Senate Committee on Health, Welfare and Science, to which was referred Bill C-25, respecting Canadian National Environment Week, met this day at 11 a.m. to give consideration to the bill.

Senator Chesley W. Carter (*Acting Chairman*) in the Chair.

The Acting Chairman: I call the meeting to order. Last night Bill C-25 was referred to this committee, but not soon enough to be included in the notices which were sent out. I have been informed that it is a very short bill and that it will take but two or three minutes to dispose of it. We can then proceed to our other business.

Senator Macnaughton: The second reading of the bill was moved last night by myself.

Senator Smith: I hope this will not hold us up for too long. I should say that I have informed several people this morning that this particular bill would not be before the committee, because it was not on the notice. The only thing in doubt last night, as I recall, had to do with the title—whether it should be simplified or shortened. If the committee wants to deal with that point now I would be quite willing to agree.

The Acting Chairman: I am told that the suggestion is that the word "National" be removed from the title, "Canadian National Environment Week"; that it should read "Canadian Environment Week" instead of "Canadian National Environment Week".

Senator Smith: The bill declares that there shall be a week known as Canadian National Environment Week. It passed the House of Commons unanimously. As Senator Macnaughton said, he referred it to this committee for a possible shortening of the title by removing the word "National". We can change the title and send it back to the Commons. It is a private bill.

The Acting Chairman: Your understanding is that there should be an amendment to the title?

Senator Smith: It is an amendment suggested by several members of the house.

The Acting Chairman: There was general agreement on the bill. Is it agreeable to the Committee that we set aside fifteen minutes for this matter, and if it is not settled in that time we can adjourn it until another date.

Senator Thompson: I move that it be called "Canadian Environment Week".

Senator Phillips: What is being accomplished by removing the word "National"?

Senator Smith: There were several suggestions. One was that it would be interpreted by some people carelessly as having to do with the Canadian National Railway. Another thing is that it did not add anything to the Canadian Environment Week, and that the word "National" was really superfluous and awkward for publicity. There were several opinions expressed by the other side of the house last night. I have no strong views on the matter myself.

Senator Phillips: Neither do I.

The Acting Chairman: I have a motion by Senator Thompson that the bill be called the Canadian Environment Week bill, and that is seconded by Senator Sullivan. Are all senators in favour of deleting the word "National" from the title?

Hon. Senators: Carried.

Senator Phillips: Did I understand Senator Smith to say it was a private bill of the House of Commons which was passed unanimously after being referred to the appropriate committee?

The Clerk of the Committee: It is a private member's public bill; it is not a private bill.

The Acting Chairman: Shall I report the bill as amended?

Hon. Senators: Agreed.

Ottawa, Thursday, March 18, 1971

The Standing Senate Committee on Health, Welfare and Science, to which was referred Bill S-11, to provide for the obtaining of information respecting weather modification activities, met this day at 10.30 a.m. to give consideration to the bill.

Senator Chesley W. Carter (*Acting Chairman*) in the Chair.

The Acting Chairman: Thank you very much, honourable senators, for asking me to preside over this meeting. We have before us Bill S-11, to provide for the obtaining of information respecting weather modification activities, and with us as witnesses are Mr. Eymard Corbin, M.P., Parliamentary Secretary to the Minister of Fisheries and

Forestry, and Mr. D. J. Wright, Liaison Meteorologist with the Department of Fisheries and Forestry. Mr. Corbin, do you have an opening statement you would like to make?

Mr. Eymard Corbin, M.P., Parliamentary Secretary to the Minister of Fisheries and Forestry: No, I do not, Mr. Chairman. I thought that the bill was very well explained in the Senate by Senator Hays. I believe, however, that Mr. Wright would like to make a brief statement on the subject.

The Acting Chairman: Mr. Wright?

Mr. D. J. Wright, Liaison Meteorologist, Department of Fisheries and Forestry: Thank you, Mr. Chairman. Honourable senators, in broad terms Bill S-11 is really concerned with modification of the weather by man's conscious intervention in weather processes. Weather modification embraces many things; not simply increasing rainfall. It is suppressing hail or lightning, dissipating fog or cloud and perhaps even lessening the strength of incipient hurricanes. In the future it may also be many more things.

But today the technology available for modifying weather processes is largely restricted to the use of seeding agents, and limited success only has resulted under special circumstances.

The World Meteorological Organization, which is a specialized agency of the United Nations, stated in October, 1970, in relation to weather modification activities—and I quote from memory—that weather modification is still largely in the research stages and more information is needed to determine the effectiveness of such activities and to establish the practical benefits.

Now, the objectives of Bill S-11 are really fourfold: (1) to ensure the availability of information on the nature and scope of weather modification activities in Canada; (2) to permit evaluation of the effects of these activities and to assess potential benefits to our economy; (3) to enable provision of information to the public as to where, when and what is going on in the way of weather modification activities; and, (4) to serve as a basis for future legislation that may be needed to regulate and control such activities.

The specific provisions of the bill, with this mind, relate to registration; provision of information in considerable detail; the recording of observed data as the result of activities being carried out; and, the reporting of this data to appropriate authorities.

In summary, I might make one more point. Weather modification is a slowly advancing field. It is quite difficult to legislate for all that might develop in the future. To cite one example that was raised in the Senate *Debates*—the weather parameter of wind—no attempts at modification of wind *per se* are known, but in attempts to modify or to reduce the energy of incipient hurricanes and of building thunder storms, which give rise to squall winds and miniature tornadoes, any success in reducing the energy of either type of storm would, of course, give a natural spin-off or fallout and a reduction accordingly in wind strength. So wind as such was not specifically

mentioned as a weather modification activity, but it is a natural fallout or spin-off of cloud seeding should that be successful.

That is all I have to say at the moment, Mr. Chairman.

The Acting Chairman: Have you anything to add to that, Mr. Corbin?

Mr. Corbin: No, I do not, Mr. Chairman.

The Acting Chairman: We are ready for questions.

Senator Thompson: Mr. Chairman, a number of years ago in the province of Ontario there was a drought situation. If I remember correctly, the provincial government negotiated for some rain-making devices to be used in northern Ontario. Can you clarify this as to whether it is a federal jurisdiction rather than a provincial jurisdiction?

Mr. Wright: This is a problem presently under consideration in the Department of Justice. It is one consideration that would certainly have to be resolved before, for example, one could proceed to a licensing-type of regulation. Certain provinces have expressed reasonably strong reservations as to jurisdictional aspects in this field.

Senator Thompson: If it does not embarrass you, may I ask if the province of Ontario is one?

Mr. Wright: Perhaps by inference rather than by direct statement in this regard.

Senator Blois: I believe an experiment was carried out in one of the prairie provinces two or three years ago having to do with rain making, I believe.

Senator Smith: The Indians did that many years ago.

Mr. Wright: I am not exactly familiar with what you have in mind, senator. Specifically, in regard to rain making, I am aware of the severe drought back at that time and the various meetings that were held and the thought that perhaps rain making people should be called in. I am also familiar with the attempts in Alberta by the hail prevention people. In that connection it is rather interesting to note that the commercial firm has restricted its operations or suspended its operations until such time as the results of the Alberta hail project are known. That project is under the aegis of the Alberta branch of the National Research Council and the McGill people—the stormy weather people—and until the results of their findings and the results of the hail suppression methods are known, the commercial firm will stay out of Alberta completely.

This has been one of the problems. Our service is never known, and it is very difficult to give an answer when a constituent writes in and complains about tremendous amounts of rain in a certain area of a province. Other than by the fact that we can find out whether it is a Government activity in terms of rain making, we have no way of knowing for sure what private agency might be operating in an area.

Senator Blois: That is the point of this bill, I take it.

Mr. Wright: Yes.

Senator Smith: I have a very simple question. What is going on in the United States in this field? I refer not only to the field of experimenting with weather modification, but to the controls that the state governments and the federal government have.

Mr. Wright: It is quite a mixture. There are some states that have very tight regulatory and control legislation. There are other states that have simply information gathering legislation and there are some others that have no legislation whatsoever. Then again the State of Pennsylvania specifically prohibits any weather modification activity being carried out at all. From the standpoint of the federal Government, the head of the National Meteorological Service, the National Weather Service has made a strong plea quite recently for federal regulatory legislation in this field. They have federal information gathering legislation. But because of the hodgepodge of legislation from one area to another, there is considerable restriction on the operation of any attempt to carry out weather modification activities. There are a number of cases of litigation pending for some years and I think there are one or two on record in which an award has been granted in favour of the complainant who suffered damages, even minor damage of the order of \$5,000 or something like that. There is one such case I can recall in New York City. But there is a great need apparently for an overall agency to co-ordinate legislation and procedure and to control it throughout the country. The feeling from the meteorological standpoint in the States is that weather knows no boundaries and hence it is a matter of federal jurisdiction. But that is simply a statement, and there is currently no action being taken on it as yet from the federal standpoint even in a preliminary sense. So that they have currently in existence in the federal field information gathering services and legislation, and it is quite varied as between one state and another. But some states have no legislation whatsoever.

Senator Smith: Mr. Wright, from your standpoint close to the scientific community in looking at these problems, what are the prospects that weather scientists have in their minds about effective control of the weather? Can man eventually control his weather? If so, I suppose we would have to have some kind of dictatorship to say whether the Sunday School picnic shall be held, or whether the crops shall be watered.

Mr. Wright: There are many problems. What may be good for agriculture in the way of weather control may be harmful for tourism. There are many potential benefits, unquestionably, but there are many problems that would go along with any effective weather control. But to answer your question specifically, I think there are dreamers in the field who visualize effective weather control in another 10 to 20 years. I think more realistically people feel that some small measure of effective control in terms of individual storm cells of the severe variety such as hurricanes particularly and of hail suppression and fog dissipation in a local airport area may certainly be realized in the next 10 years. Other than

that I cannot give you a really good answer to that question.

Senator Smith: I should hope the dreamers are allowed to dream because some dreams do bring results. I think of my own experience in the Province of Nova Scotia over the last 50 years, and of the lives that have been lost at sea because of hurricanes coming up from the Caribbean, and also the effect on the economy of the agricultural community and the tourist industry. I am all in favour of weather modification particularly during a winter such as we have just had when everybody broke his back shovelling snow even in what should normally be a very mild part of the country, namely, Nova Scotia.

Mr. Wright: If I might just add a postscript to that, there is a problem there in the specific point you mention. The hurricane as it hits land for the first time in the south-eastern part of the United States, of course, strikes with a full-fledged blow. Then as it continues—and let us assume one that is moving inland—it weakens, but it has drenching rains which may be of considerable value to, say, the agricultural industry, and industry generally in the north-eastern part of the United States. But then as it moves off the land again and heads towards the Maritimes, it has undergone a change. It has been revitalized by the colder air coming from Canada, and has become what we call an extra-tropical storm and has become just as intense as it was originally, and it does damage in the Maritimes. But if, for example, the modifying influence weakened that hurricane so that it moved up through Maine with no significant amount of rain then, of course, it could hinder their industry or their agriculture. You run into this type of problem, senator.

Senator Smith: Thank you for adding that. It is very interesting.

Senator Kinnear: I was going to ask a question along the same lines as that asked by Senator Smith, but in regard to fog. The fog situation is bad in so many parts of Canada, particularly around the Great Lakes, and I was glad to hear you say that something is being done. I would like you to elaborate on that and to tell me what you are doing with seeding. I know Buffalo, New York, has been doing some seeding and it is unsuccessful. But it is so close to Ontario that the effects would bother us.

Mr. Wright: Perhaps this casts a little gloom, but there was a fog seeding experiment done with the co-operation and collaboration of numerous airline companies in Vancouver through the months of December and January. This involved what we call warm air fog. Similar experiments had been reasonably successful around the United States west coast in the past two or three years. Now that experiment concluded at the end of January or the early part of February, and unfortunately the preliminary results did not show much success. It certainly did not show the success that had been anticipated. I am not sure of the reasons for this, but it was the first attempt in Canada in a concentrated way to attempt to break up fog at Vancouver Airport where it was quite prevalent. However, with the temperature regime which is considerably warmer down along the United States west coast, in

the preceding two winters they had considerable success, for very brief periods—enough to let aircraft in and out.

Senator Kinnear: What about England? I thought they had made considerable strides in that area.

Mr. Wright: They have used various devices ranging from, just after the war, burning off the fog with petrol and installing heating units and so on, but the summary effect of that is to give an extremely temporary lifting of the fog. If you can seed the cloud and disturb the physical content or the matter or energy in the cloud such as breaking up the water droplets, and thinning them out, then you dissipate the whole entity and let the sun do the rest. This is what was hoped would happen in Vancouver. I do not know if it is their intention to try this again, but I think they had only four or five really good cases. They were restricted by limits on taking off at one time, and then they had aircraft problems at another time. They were seeding from aircraft in flight, and when the fog got down to a really critical level, the aircraft would take off and seed the top of the cloud which was quite thin.

There were some technical problems involved, but I think they had only four or five cases to examine. That is why the preliminary information was so quickly obtained and they did not reveal much success one way or another.

The Acting Chairman: Are there any international organizations in connection with weather modification?

Mr. Wright: The World Meteorological Organization, which co-ordinates statements of meteorological observation and forecasting procedures, is concerned with international standards and observation of air pollution and weather modification, and is taking quite an active role. This organization is almost a hundred years old—its centenary is next year. As a specialized agency of the United Nations it receives data from all over the world. This information is up to date and is distributed. For example, the results of a fog experiment in Canada, and the mechanism used, is passed to meteorological agencies in other countries so that they do not try the same thing without success.

The Acting Chairman: Is Canada a member of this organization?

Mr. Wright: Yes, an active member.

The Acting Chairman: While in the parliamentary reading room last week I saw a magazine which forecast the weather for the whole year. I should tell honourable senators that the forecast for March was not too encouraging. I do not know how accurate it was, but it forecast quite a bit of snow toward the end of March and some even in April. Who would prepare that sort of publication? Is that an assembly of information from all over the world?

Mr. Wright: Although unscientific, it is prepared on the basis of reliable statistics over the years. A pattern, say, for the winter of 1970-1971 may compare to that for the winter of 1915-1916, and it might indicate that we could

continue with this type of weather pattern. They do look for anomalies.

The Acting Chairman: Cycles?

Mr. Wright: Yes, that type of thing. That method is used quite extensively, although there is no astrology involved. As a matter of fact I checked this morning and found that we had exactly twice as much snow this year than we had on the same date last year. The figure was 85 inches as against 170 inches.

Senator Inman: I should like to ask the witness how accurate meteorologists in Prince Edward Island are? I was recently speaking to a meteorologist attached to the Air Force there, who told me that it was very hard to predict accurately what the weather would be over Prince Edward Island in view of the fact that we are located in the Gulf of St. Lawrence, and atmospheric conditions have a bearing on our weather. I know that scientists have learned a lot in the last 24 years.

Mr. Wright: I spent perhaps the best 10 years of my life in the weather business in Newfoundland.

Senator Smith: And in the fishing business also, no doubt.

Mr. Wright: I would agree that next to St. John's, Newfoundland, Prince Edward Island presents one of our biggest forecast problems because of the sweep of the sea. There is also the question of knowledge of local conditions. In other words, a person living in the area who is familiar with meteorology in general terms, and who has lived there a number of years, can undoubtedly forecast as well as, if not better than, the professional meteorologist who is preparing a forecast from some distance away. In other words, a person has to interpret the general forecast conditions by his own individual knowledge. This is true throughout the country. That is the way my ancestors functioned on the farm, and the way I was taught to function. No one really ridiculed the forecasters. It was a form of guidance. Hopefully we thought the weather would get better, but sometimes we became discouraged. People should interpret and adapt professional forecasts to their own particular locale, and they can do this quite well.

Senator Inman: I was born and brought up in Prince Edward Island. I am not setting myself up as a meteorologist, but I feel that I know what the weather will be like the next day.

Mr. Wright: And I think you are probably quite right.

Senator Inman: My grandfather was a sea captain and he instructed me very well in how this was done. I was interested in this aspect because, as I mentioned, I was told that it was very difficult to accurately predict what would happen. I was also told that the weather in Australia and other countries in that area has some bearing on what we are likely to have the following year.

Mr. Wright: That is not scientifically correct, but certainly the weather we have is directly linked with the atmospheric pattern in the northern hemisphere. There is

no question about that. If there is a system out in the north Atlantic that has stalled, it backs all the way up to the Pacific and affects our pattern of weather here in Ottawa.

Senator Smith: I venture to say that there are at least one million amateur meteorologists around the country. They are not really meteorologists at all but many people depend on them. Many retired sea captains who have had a good deal of experience now live ashore. They have a tremendous knowledge, and the witness paid such people a very good compliment. I hope that anyone who has friends who are amateur forecasters should tell them that the pros agree they have something that the pros do not have, in that they have lived long enough in one place to be able to forecast accurately.

The Acting Chairman: Thank you, Senator Smith.

Senator Denis: A person who wishes to engage in weather modification activities is given instructions on what he has to do. However, weather modification activities may be beneficial to one area but harmful to another. I do not see anything in the bill to prevent a man from engaging in weather modification activities.

Mr. Wright: I would refer the honourable senator to section 6:

The Governor in Council may make regulations prescribing any matter or thing that by this act may be prescribed.

It is hoped that with the co-operation of the Department of Justice and other departments involved there will be a tightening up when the specific regulations in terms of the reference are spelled out to handle this type of situation. Otherwise, you are quite correct in what you say.

Senator Denis: Do you not think it is important enough that it should be in the bill instead of in the regulations?

Mr. Wright: We cannot say. There is not enough scientific or technical evidence, for example, to say with any degree of accuracy or conclusiveness that the modification of weather, in the sense of making rain is sufficiently successful that it would cause more or less rain to fall on a certain area downstream or upstream as distinct from where the rain makers are operating—in other words, whether it would do damage to a particular area. If we knew more about this, we would be able to say one way or the other. Perhaps I gave the wrong impression when I said that what might be good for agriculture might not be good for the tourist industry, but this is looking into the future. The actual status of weather modification at the moment, based on current scientific and technical evidence, certainly does not indicate that one can be successful to a significant degree in modifying the weather. In Canada the last experiment in rain making was up in the Val d'Or area. The Canadian Government operated an experiment there from 1959 to 1963. There were 47 cases altogether in those five years, and the Government found that there were as many cases where rainfall was decreased by a minute amount as there were where rainfall was increased by a minute amount. So that the

sum total of the cloud seeding which was done by aircraft was really completely ineffective so far as revealing one way or the other that there was any significant change.

Where they have found a significant change on the basis of scientific evidence is in certain conditions of mountainous areas where you have the wind blowing up the mountain slopes over a prolonged period of time with a good circulation of moisture embedded in the flow. Then cloud seeding on top of this would tend to continue the precipitation for a longer period than is normally found without the seeding.

To answer your question specifically, I think there is no question but that the status of the science at the moment is such that one cannot say with any degree of accuracy that it would or would not do damage. So far as we know, there is no indication that it would do damage, but there is no indication that it could not.

Senator Denis: If I understand you well, the success of the operation is so improbable or so insignificant that no one could tell that such action would be harmful to the neighbourhood or the surrounding area, and so there is nothing to prevent the operation from taking place. But, in my opinion, there should be specific authority, to be used with discretion, given to the Government to forbid such operations. If those kinds of modification are no good, perhaps this bill is useless.

Mr. Wright: To come back to your point, senator, if permission was given for weather modification to be carried out in the province of Ontario and it was evident that, while rain was created in a certain area to the east or to the south, there was less rain than normal, and if there was some scientific evidence that it was as a result of more rain falling west of the point, then this would be a certain case where information would be gathered on it and it would be a specific case requiring us to take a look at the need for regulating and controlling this type of activity. There is no question about that.

Senator Denis: It would be too late, then.

Mr. Wright: On the other hand, we should bear in mind that it is an advancing science, which the scientists in the United States, Russia and Australia feel quite strongly will advance considerably in the next ten years, then we should be prepared to learn all we can about it.

Senator Denis: In order to be on the safe side, do you not think there should be a clause in the bill giving the right to the appropriate authority to prevent such an action, or to stop anyone from starting a modification? That would put us on the safe side. As it is, according to this bill if a man wants to modify the weather he just has to fill out a form and that is it, whether it is harmful or not, and the Government cannot do anything to prevent it.

Mr. Corbin: Mr. Chairman, perhaps you will allow me to try to answer Senator Denis' objection to the bill as it is written now. In fact, what Senator Denis is saying is that the bill does not go far enough; that it does not provide for the regulation of weather modification activities.

Senator Denis: It does not prevent such an action if someone thinks it is going to be harmful to someone else.

Mr. Corbin: Naturally, the Government could put its foot down and say there will be no weather modification activities period.

Senator Denis: Not according to this bill.

Mr. Corbin: Certainly not. This is not the purpose or intent of the bill. It should be made very clear that the purpose of the bill is to gather data which will be evaluated in the months and years ahead and which will supply us with some good, sound scientific evidence on which to build a foundation for regulating weather-making activities later on.

Senator Denis: The purpose of the Government would be the same, even if there were a clause preventing someone from doing that, if it was decided that it would be harmful. You could get that data anyway.

Mr. Corbin: Here we run into a jurisdictional problem, senator. Many provinces claim complete jurisdiction over the licensing and regulation of weather modification activities.

We have asked the Department of Justice for a legal opinion in this matter, but unfortunately it has not been produced. But, even if we did have their opinion, it is only indirectly related to the matter brought up in this bill. The important thing to remember is that we are gathering information in order to set the scientific basis for future regulations.

Senator Denis: I am in favour of that.

Mr. Corbin: I might point out that at the moment in the United States there is a certain mess because of varying standards. The various states have been issuing licences for rain-making activities, but their standards vary from one place to another and are not necessarily put on a sound scientific basis so that the result has been that the federal Government feels obliged at this stage to intervene in order to try to put some order into the whole activity. We do not want to go through that in Canada. We would like to gather our scientific data and lay down a scientific basis first and thus act in a sound way.

Senator Michaud: Mr. Chairman, I was interested to hear a while ago that some work had been done in Newfoundland. I am from the eastern part of New Brunswick, from the area bordering on the Northumberland Strait. It is generally felt there that we are experiencing much more dry weather during the summer months in that particular area than in other parts of the province—the western part, for instance, or even, for that matter, Prince Edward Island. Is there any scientific explanation or scientific data to determine why one particular area like that would be experiencing more dry weather than another? I am speaking now of the average.

Mr. Wright: I would suggest it is a matter of circulation. There is more of a basically protective type of circulation in that area in the summer as distinct from,

say, the southern part of Nova Scotia, for example, or the southern part of New Brunswick. So it is more of a circulation problem, I think, and not dissimilar to certain areas in the Prairies where you get the same type of situation. We used to call them the desert belts or something like that. I am quite familiar with the area you have in mind, and for particular reasons we often long for a good solid alternative for aircraft in that area where the weather was so dry and devoid of many of the weather conditions that occurred further south and southeast. So I would say it is a matter of the fact that you have a protective circulation there in the summer months as distinct from the southern parts of the area.

Senator Michaud: Then, according to your explanation, it is recognized as being a dry area.

Mr. Wright: Yes, I have seen precipitation contours for that area on a seasonal basis and certainly the precipitation tapers off considerably as compared with other areas.

Senator McGrand: Going back to the people who make rain, so to speak, I remember that 1921 was a tremendously dry year in western Canada and the Maritimes. At that time the first rainmaker made his appearance in Alberta, and he had a contract with farmers to produce rain. It seems to me that there was some legislation passed in Alberta at that time and, if I remember correctly, the matter got into the courts. Have you any information on that?

Mr. Wright: I have never run across that at all. I might say that Alberta was one of the first provinces that specifically indicated strong support for information-gathering legislation, but at the same time indicated that they would reserve the option of being brought back into the picture should regulatory or licensing legislation be considered or necessary at any time in the future. Now this might infer that possibly there is nothing in the way of a statute currently in existence.

Senator McGrand: I asked the question only because you said that perhaps the provinces would want to control this sort of thing.

Mr. Wright: They wish to be consulted further, certainly on the jurisdictional aspects and the legal liability aspects, should control legislation be contemplated in the future.

Senator Inman: I remember the incident that Senator McGrand speaks about, and I am wondering what would happen in Prince Edward Island—and here I know we do not have to worry too much about whether we have rain because we usually do not have too dry a spell—if, for instance, the people who were tourist operators wanted no rain and the farmers who are in the majority did want rain for crops. How would that be settled?

Mr. Wright: I think this is really one of the objectives of this legislation, to gather enough information so that the Government can then sit back and take a look at it and assess the situation to see what is most beneficial to the economy as a whole. Somebody is bound to suffer,

undoubtedly, but in the interests of the economy as a whole, one would have to regulate and control weather modification activities for the benefit of as many segments of the economy as possible.

Senator Inman: Potato growers want it dry, and wheat growers want rain.

Mr. Wright: That is if it ever comes to the point where it can be controlled.

Senator Thompson: Mr. Chairman, clause 2(b), on the first page of the bill, provides:

(b) "Weather modification activity" includes any action designed or intended to produce... for the purpose of increasing, decreasing or redistributing precipitation, decreasing or suppressing hail or lightning, or dissipating fog or cloud.

Speaking as a layman, I think there may be some suggestions for the use of atomic power in heating the Arctic, and experiments which really are not exclusively intended to produce changes, and yet they would be very important in studying the effect and getting information on this. I do not know of other experiments, but in connection with such things as this and on a broader basis do you have means of asking for information?

Mr. Wright: I certainly think if this were not available through other scientific sources, it would be something that would be laid down in the regulations. Of course, in Canada this would also be governed by such things as the clean air act when it becomes law. I think there are certainly plenty of channels of information on this type of activity.

Senator Thompson: Again I am reaching into the future, but assuming the St. Lawrence were to be heated,

I would suggest that would have quite an effect on the weather, and I understand there is considerable experimentation in the Arctic by the Russians in connection with heating the Arctic.

Mr. Wright: Here you run into modification on almost a climatic basis, and this is an area that the World Meteorological Organization and its member states have been looking at quite carefully.

Senator Blois: For quite a few years the Canadian Government in conjunction with the United States Government has done a great deal of weather experimentation and observation about 15 miles from Fort Churchill. I think that information and data went to Washington as well as to Ottawa. Did they gain much information from that? It was fairly expensive, as far as the Canadian team is concerned they did a magnificent job. I was up there on a couple of occasions, I thought they were doing a marvellous job.

Mr. Wright: This is one of the types of work, primarily high atmospheric and stratospheric work which is now extremely useful for both governments in the evaluation, for example, of supersonic transport operations, and also from the standpoint of future development and research into pollution with respect to air movement at various levels and the differential in ozone concentrations. This has been a valuable fallout with respect to how much sun we get or do not get, and how much pollution is retained or not retained in the air. I am not a scientist in the pure or research sense, but it is now becoming even more valuable than was anticipated before.

The Acting Chairman: Are there any further questions? Shall I report the bill without amendment?

Hon. Senators: Agreed.

The committee adjourned.

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THIRD SESSION—TWENTY-EIGHTH PARLIAMENT
1970-71

THE SENATE OF CANADA
PROCEEDINGS OF THE
STANDING SENATE COMMITTEE ON
**HEALTH, WELFARE
AND SCIENCE**

The Honourable CHESLEY W. CARTER, *Acting Chairman*

No. 6

WEDNESDAY, APRIL 7, 1971

Complete Proceedings on the following Bills:

- Bill C-232, "An Act to amend the Civilian War Pensions and Allowances Act"
- Bill C-233, "An Act to amend the War Veterans Allowance Act, 1952"
- Bill C-234, "An Act to amend the Pension Act"

REPORTS OF THE COMMITTEE

(Witnesses and Appendices:—See Minutes of Proceedings)

THE SENATE COMMITTEE ON HEALTH,
WELFARE AND SCIENCE

Chairman: The Honourable Maurice Lamontagne

The Honourable Senators:

Bélisle	Inman
Blois	Kinnear
Bourget	Lamontagne
Cameron	Macdonald (<i>Cape Breton</i>)
Carter	McGrand
Connolly (<i>Halifax North</i>)	Michaud
Croll	Phillips
Denis	Quart
Fergusson	Robichaud
Fournier (<i>de Lanaudière</i>)	Roebuck
Fournier (<i>Madawaska- Restigouche</i>)	Smith
Hays	Sullivan
Hastings	Thompson
	Yuzyk—(27).

Ex officio Members: Flynn and Martin

(Quorum 7)

Orders of Reference

Extract from the Minutes of the Proceedings of the Senate, April 6, 1971:

Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator McDonald, seconded by the Honourable Senator Croll, for the second reading of the Bill C-232, intituled: "An Act to amend the Civilian War Pensions and Allowances Act".

After debate, and—
The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator McDonald moved, seconded by the Honourable Senator Croll, that the Bill be referred to the Standing Senate Committee on Health, Welfare and Science.

The question being put on the motion, it was—
Resolved in the affirmative.

Extract from the Minutes of the Proceedings of the Senate, April 6, 1971:

Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator McDonald, seconded by the Honourable Senator Croll, for the second reading of the Bill C-233, intituled: "An Act to amend the War Veterans Allowance Act, 1952".

After debate, and—
The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator McDonald moved, seconded by the Honourable Senator Croll, that the Bill be referred to the Standing Senate Committee on Health, Welfare and Science.

The question being put on the motion, it was—
Resolved in the affirmative.

Extract from the Minutes of the Proceedings of the Senate, April 6, 1971:

Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator McDonald, seconded by the Honourable Senator Croll, for the second reading of the Bill C-234, intituled: "An Act to amend the Pension Act".

After debate, and—
The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator McDonald moved, seconded by the Honourable Senator Bourget, P.C., that the Bill be referred to the Standing Senate Committee on Health, Welfare and Science.

The question being put on the motion, it was—
Resolved in the affirmative.

Robert Fortier
Clerk of the Senate

Minutes of Proceedings

Wednesday, April 7, 1971.

(6)

Pursuant to adjournment and notice the Standing Senate Committee on Health, Welfare and Science met this day at 9.30 a.m.

Present: The Honourable Senators: Bourget, Cameron, Carter, Fergusson, Inman, Phillips, Quart and Robichaud.—(8).

The Honourable Senator White, not a member of the Committee, was also present.

On Motion of the Honourable Senator Bourget, the Honourable Senator Carter was elected Acting Chairman.

On Motion of the Honourable Senator Robichaud, it was Resolved to print 800 copies in English and 300 copies in French of these proceedings.

The Committee proceeded to the consideration of the following Bills:

Bill C-232, "An Act to amend the Civilian War Pensions and Allowances Act".

Bill C-233, "An Act to amend the War Veterans Allowance Act, 1952".

Bill C-234, "An Act to amend the Pension Act".

The following witnesses were heard in explanation of the Bills:

Dr. J. S. Hodgson, Deputy Minister,
Department of Veterans Affairs.

Mr. D. M. Thompson, Chairman,
War Veterans Allowance Board.

The following witnesses were also present but were not heard:

Mr. C. K. Kendall, Special Assistant,
Department of Veterans Affairs.

Mr. J. E. Walsh, Director,
Financial Management Directorate,
Department of Veterans Affairs.

Mr. P. E. Reynolds, Director,
Legal Branch,
Department of Veterans Affairs.

Mr. P. Benoit, Executive Assistant,
War Veterans Allowance Board.

Mr. R. N. Jutras, Commissioner,
Canadian Pension Commission.

On Motion of the Honourable Senator Robichaud, it was Resolved to report the said Bills without amendment.

It was Resolved to print as an appendix an explanation of the Pension Act and a copy of an advertisement published by the Department of Veterans Affairs. They appear as Appendix "A" to these proceedings.

It was also resolved to print copies of letters received from The Royal Canadian Legion and from the National Council of Veterans Associations. They appear as Appendix "B".

At 10.30 a.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Denis Bouffard,
Clerk of the Committee.

ERRATUM

The Order of Reference in the English version of issue No. 3 of the Proceedings of this Committee should be the same as the Order of Reference appearing in issue no. 4.

Reports of the Committee

Wednesday, April 7, 1971.

The Standing Senate Committee on Health, Welfare and Science to which was referred Bill C-232, intituled: "An Act to amend the Civilian War Pensions and Allowances Act", has in obedience to the order of reference of April 6, 1971, examined the said Bill and now reports the same without amendment.

Respectfully submitted.

Chesley W. Carter,
Acting Chairman.

Wednesday, April 7, 1971.

The Standing Senate Committee on Health, Welfare and Science to which was referred Bill C-233, intituled: "An Act to amend the War Veterans Allowance Act, 1952", has in obedience to the order of reference of Tuesday, April 6, 1971, examined the said Bill and now reports the same without amendment.

Respectfully submitted.

Chesley W. Carter,
Acting Chairman.

Wednesday, April 7, 1971.

The Standing Senate Committee on Health, Welfare and Science to which was referred Bill C-234, intituled: "An Act to amend the Pension Act", has in obedience to the order of reference of Tuesday, April 6, 1971, examined the said Bill and now reports the same without amendment.

Respectfully submitted.

Chesley W. Carter,
Acting Chairman.

The Standing Senate Committee on Health, Welfare and Science

Evidence

Ottawa, Wednesday, April 7, 1971

[Text]

The Standing Senate Committee on Health, Welfare and Science, to which were referred Bills C-232, to amend the War Veterans Allowance Act and Bill C-234, to amend the Pension Act, met this day at 9.30 a.m. to give consideration to the bills.

Senator Chesley W. Carter (*Acting Chairman*) in the Chair.

The Acting Chairman: Honourable senators, we have Bills C-232, C-233 and C-234, before us for consideration. Is it your pleasure to consider each bill separately, or to take all three of them together. I might add that the three bills deal with the same topic. It would be simpler if we considered the three together.

Hon. Senators: Agreed.

The Acting Chairman: We have as witnesses this morning Dr. J. S. Hodgson, Deputy Minister of Veterans Affairs, Mr. P. Reynolds, Legal Adviser, the Department of Veterans Affairs. From the War Veterans Allowances Board we have the Chairman, Mr. Don Thompson who is well known to all of us here, and we have Mr. Kendall from the Pension Commission. Then there are Mr. Jutra from the Canadian Pension Commission, and Mr. Benoit.

Doctor J. S. Hodgson, Deputy Minister of Veterans Affairs: Mr. Chairman, Mr. Walsh, the Director of Financial Management of the Department of Veterans Affairs, is also present.

The Acting Chairman: Bill C-232 is a routine bill. It increases the pensions rates by a certain percentage. Bill C-234 does the same thing, while Bill C-233 deals with the War Veterans Allowances Act and is slightly different.

Do you wish to make an opening statement, Dr. Hodgson?

Dr. Hodgson: Mr. Chairman, I have no prepared statement, but I wonder if it is the wish of the committee that I read what the Minister said with regard to the War Veterans Allowance bill when it was under consideration in the other place. This summarizes the changes.

The Acting Chairman: Is it agreed, honourable senators?

Hon. Senators: Agreed.

Dr. Hodgson: The Minister said:

The second of the measures now before the Standing Committee is a bill to amend the War Veterans' Allowance Act. This bill is also straightforward: it would authorize a 15 per cent increase in basic rates of War Veterans' Allowances, and increases of the same dollar amounts—not percentages—in the WVA ceilings. Thus for example the maximum rate for a married recipient will rise from \$175. to \$201. per month, and the "maximum total annual income" (that is the ceiling) will in this case rise from \$2,940. to \$3,252. The rates for orphans and blind persons are being similarly increased. The present rates have been in effect since 1966, which explains why the WVA increase is 5 per cent higher than the pension increase.

This Bill contains no amendments other than the changes in rates. However, a number of concurrent changes are taking place, and I would like to describe them in general terms for the information of the Committee. In my statement in the House on December 2nd I mentioned that the regulations would also be changed, effective as of April 1, 1971, to provide that recipients who are also eligible for Old Age Security and Guaranteed Income Supplement—which are also being increased—will be deemed to be receiving the full amounts to which they would be entitled under those programs. I mentioned that their WVA will then be adjusted to supplement their OAS and GIS payment to bring their incomes to the level of their relevant income ceilings. This procedure is being given effect by amendments to the WVA Regulations. Mr. Chairman I might explain that the WVA Act authorizes the making of regulations "defining income for the purposes of this Act, and prescribing the manner in which income is to be determined" (Section 22e).

During January, notices were sent to veterans affected, advising them to make application for benefits under the Old Age Security Act if they had not already done so. They were reminded of the importance of making this application in order to avoid a loss of income.

Mr. Chairman, I can assure the committee that this change in procedure will be handled as reasonably and flexibly as the circumstances permit. For example, as I mentioned in the house in the adjournment debate, in the case of a veteran who has made application for GIS before April 1st but is not yet receiving it, the procedural change will be postponed until the Department of National Health and Welfare begins his GIS payments. In other words, no one will be penalized for delays that are outside his control.

Members of the committee will be aware that war veterans allowance is exempt income under the Income Tax Act, while payments under the Old Age Security Act are not. It will of course be appreciated that I am not in a position to speculate upon the possible provisions of the government's future budgets. I can say however that the White Paper on Taxation mentions that the government proposes to increase the basic personal exemption for a single person as well as for a married couple.

Another effect of the new procedure is that some veterans, who have other sources of income, will cease to be eligible for WVA payments because of the amounts they will be receiving under the Old Age Security Act. Under the Veterans Treatment Regulations these veterans remain eligible for medical and hospital treatment at departmental expense. This will also mean that they will remain eligible for consideration under the Veterans' Burial Regulations provided that, before death, they have been found eligible for WVA if it were not for OAS or GIS that was or could have been in payment.

Mr. Chairman, we are also amending the Treatment Regulations to permit us to continue to pay medicare and hospital insurance premiums in respect of those veterans who, but for the receipt of payments under the Old Age Security Act, would be eligible for WVA.

I should perhaps mention the effect of the new procedure upon the special awards provided under section 5 of the WVA Act. This section provides in general terms that where a married recipient dies, his widow may receive WVA at the married rate for one year. Mr. Chairman, in cases where the receipt of OAS payments removes a veteran from WVA, this death benefit will remain available for a period of a year from the time he ceases to receive WVA.

Of course, this benefit would no longer apply at the end of the twelve months, but this has always been the case with regard to persons who go off WVA for any reason whatever. For example, a disability pensioner whose pension may be increased by as little as 5 per cent, or a person who ceases to be eligible for WVA because of an increase in superannuation, would be treated in exactly the same way.

Finally, I would like to explain one more aspect of the adjustments being made by the changes in the regulations. It will be recalled that on four occasions since 1966 the rates of Old Age Security have been raised, in recognition of rises in the cost of living. These four escalations have been exempted from income for purposes of WVA. In other words, WVA recipients over 65 who have been getting OAS have been receiving more in total than younger recipients, who are still getting the same as in September, 1966. The present 15 per cent increase in WVA rates recognizes the changes in costs and prices since 1966, and therefore the exemptions of the OAS escalations will be discontinued as of April 1st. From that date, the whole amount of OAS/GIS received will count as income for purposes of WVA.

In other words, the conditions affecting all recipients will again be the same whether they are over or under age 65. This consolidation of OAS exemptions at a time of WVA increase is not a new principle: it was done previously in 1964.

The Acting Chairman: Thank you, Dr. Hodgson. Mr. Thompson, do you have anything to add?

Mr. D. Thompson, Chairman, War Veterans Allowance Board: Non, I have nothing to add, Mr. Chairman.

The Acting Chairman: Are there any questions?

Senator Phillips: I will start the questioning by referring to the removal of the allowance paid a widow per year. This is a point that disturbs me in the change of regulations. Let us take the case of a veteran who is 65. He would be forced to apply for OAS and GIS, and this removes him from War Veterans Allowance. If he were allowed to continue, his widow, being over 55, would have received some benefits. What position is she in now with regard to benefits?

Dr. Hodgson: Mr. Chairman, if he should die and was not on WVA because of the receipt of OAS/GIS, she would remain eligible for that payment for one year from the time that he went off WVA. This is the same as for other people who go off WVA for any other reason.

Senator Phillips: Yes, but if he died two years from now, after he was off, she would not be eligible for benefits. But if this regulation had not been changed, she would have been eligible for benefits.

Dr. Hodgson: If he had remained on WVA until his death she would have been eligible. This is so. It will be appreciated, of course, that this death benefit consists of a payment of the married rate to the survivor. The survivor, even though not eligible for the married rate, may be eligible for the single rate in his or her own right.

Senator Phillips: Yes.

Dr. Hodgson: So it is only the differential that is at stake.

Senator Phillips: Yes. The point I want clarified is, will she be at any time eligible for the single rate? I knew she would not be eligible for the married rate.

Mr. Thompson: Yes, Mr. Chairman, as a widow she could be considered for eligibility in her own right and in consideration of her own financial circumstances.

Senator White: Were she under 55 would she still be eligible?

Mr. Thompson: If she is medically unfit to provide for her own maintenance, or there is a combination of medical, physical and economic circumstances, she can be granted the allowance under age 55.

Senator White: But if the widow does not have any of those benefits, then under these changes she is losing a decided benefit, because if at the date of the death of her

husband he was under allowance she would get the allowance for the year and then go on the single rate. So if she is under 55 and her husband is not under the allowance, she would not get the allowance of the double rate for the year and she would not be eligible for the single rate—that is correct, is it not?

Mr. Thompson: Yes, this would be so if she failed to qualify in her own right.

Senator White: Then why put the widow at that very decided disadvantage? In these days of women's liberation and all the other things going on, do you not think you are doing a great injustice to the widows?

Dr. Hodgson: I quoted the minister's text, to the effect that all people who go off WVA are, for that reason, in the same position.

Senator White: The reason for making this change in the regulations is simply for the purpose of making the veteran in many cases eligible for income tax. After all, he will get exactly the same amount of money. Why make all these changes and make the poor veteran, who has to live, subject to income tax? I realize that is policy, but if all these things are policy, then someone should be here from the department to give an explanation of the reasoning for some of these decisions, because older veterans like myself cannot understand it.

Dr. Hodgson: As the minister said in his statement, it is not possible for him to predict whether income tax will arise or not. All he could mention was the White Paper on Taxation which indicated an intention to raise the exemptions. As to the point that a veteran who had been off WVA for longer than a year would not be entitled to the so-called death benefit, that is something that has always been the case. It is not a new provision.

Senator White: But by the change in the regulations, as I understand it, a veteran is forced to apply for these extra benefits under Old Age Security, and is actually being forced off WVA.

Dr. Hodgson: The regulations state that eligibility for OAS and GIS, will be counted as part of a person's income. Such a person would go off WVA only if he had another source of income as well.

Senator White: Why was it necessary to make that change? The amount that he will get in the end is exactly the same, whether part of it comes from OAS or the Department of National Health and Welfare.

Dr. Hodgson: It is a little difficult for Mr. Thompson and I to give a categorical answer concerning the reasons for the policy. These payments come from the Estimates of the Department of National Health and Welfare as part of the overall general OAS pool of funds, and it therefore becomes unnecessary for the Department of Veterans Affairs to increase its Estimates for this specific group of persons.

The Acting Chairman: Senator White, I do not think the deputy minister is in a position to discuss policy.

Senator White: I appreciate that, but the change will cause a great deal of further bitterness among veterans, especially older veterans who do not understand the reason for it. However, I realize that the deputy minister cannot give an answer on this point.

The Acting Chairman: Dr. Hodgson, under the present tax system, with the present exemptions, is it possible that if a person, who has just enough income to go off WVA, has to pay income tax he will be worse off in the final analysis? Will his total take-home pay, his total useable income, be less? Are there circumstances when it would be less than if he were on WVA?

Dr. Hodgson: It will be recalled that as of April 1 there is a 15 per cent increase in WVA. Regarding whether any recipient will in fact pay income tax in future years, as the minister pointed out this is something on which it is difficult to speculate. I would be astonished if any single individual were receiving less after April 1 than before.

Senator White: Dr. Hodgson, when you were before the committee of the other place you were asked a question which was not answered. I wonder if you would say whether this is correct. I think the person who asked the question was entirely wrong. His question was:

A person receiving War Veteran's Allowance can live outside Canada for a year, if he went with a friend to Florida for example, and still draw his War Veteran's Allowance. But if he is under Old Age Pension, of course he has to stay in Canada for part of the year. He can only live outside for so many months. I am not sure what the exact regulation is.

The member continued with his question but you did not answer him. Is that not entirely wrong?

Mr. Thompson: At the present time if a person, who is receiving any portion of a War Veteran's Allowance, leaves the country longer than the time permitted under the OAS Act and regulations, his War Veteran's Allowance could be increased. However, if he is not receiving a War Veteran's Allowance and is on OAS, he would come under that act and those regulations. A recipient of a War Veteran's Allowance can leave the country after he has been here for the required time.

The Acting Chairman: Indefinitely?

Mr. Thompson: Indefinitely.

Senator White: What about an Old Age Pensioner? Can he live outside the country and still receive it?

Dr. Hodgson: In the case of Old Age Security benefits, the period is shorter. If a person ceases to be eligible for OAS he may become eligible again for WVA, because the only sums that will be taken into account are those under OAS that a person is eligible to receive.

Senator Inman: What happens regarding a pensioner who cannot live in this climate? A person in my own province, Prince Edward Island, may find he cannot live near the sea and must move somewhere where it is dry and high. Can he not receive his Old Age Pension? I have in mind cases of emphysema.

Mr. Thompson: That comes under the Old Age Security Act, and I would not want to say what the regulations are. My understanding is that there is a restriction as to the length of time, but there may be a provision for extenuating circumstances. That does not come under our jurisdiction.

Senator Phillips: I will have a number of questions to ask during the hearing. I do not want to prevent others from asking questions. First, I should like to say that I realize that the deputy minister cannot give an answer on this although he may have had something to do with the recommendations. I should like to express my objection to the way this change in the regulations is being effected. A notice went out in January without any notice being given to Parliament, and it was not until a few days ago that an explanation was given to Parliament. When an act is being changed, any changes in the regulations should be included in the act rather than advantage being taken of section 22. This is a rather unusual tactic to adopt when an act is being amended.

First, I should like to ask why a veteran is not allowed to take advantage of the 2 per cent increase in the cost of living allowance in OAS and GIS? At the present time a veteran and his wife, both of whom are over 65, can receive an Assistance Allowance of \$16 per month. Am I correct in that? That is above the \$255. At the present time our cost of living index affecting the allowance for OAS and GIS has been 2 per cent a year. In eight years this will be completely eliminated, and four years from now 50 per cent of the benefit given veterans under the Assistance Allowance will have been worn away by simple attrition. I fail to see why, if we are going to have that allowance, it is not continuing.

Dr. Hodgson: Mr. Chairman, perhaps I might refer again to the minister's statement. He mentioned that on December 2 he had announced in the House the changes that were to be made. This was the announcement which preceded the notices sent to veterans during January. With regard to the question of the 2 per cent escalations, the minister pointed out:

In other words, WVA recipients over 65 who have been getting OAS have been receiving more in total than younger recipients, who are still getting the same as in September, 1966. The present 15 per cent increase in WVA rates recognizes the changes in costs and prices since 1966, and therefore the exemptions of the OAS escalations will be discontinued as of April 1st. From that date, the whole amount of OAS/GIS received will count as income for purposes of WVA. In other words, the conditions affecting all recipients will again be the same whether they are over or under age 65. This consolidation of OAS exemptions at a time of WVA increase is not a new principle: it was done previously in 1964.

As to what might happen with regard to future escalations of Old Age Security and Guaranteed Income Supplement this, of course, is something on which Government policy has not been announced and I could not speculate as to what the policy might be.

Senator Phillips: But, as it stands now, unless there is a change the benefit of War Veterans Allowance to those over the age of 65 will gradually be lost as the non-veteran receives an increase of 2 per cent each year.

Dr. Hodgson: Mr. Chairman, this would be so if neither of two things happened: if an order in council is not passed to exempt the future escalations, and if the War Veterans Allowance ceilings themselves did not rise.

Senator Phillips: Considering the length of time it took to have the ceilings raised from 1966 to now, I predict that this will be eroded by the cost of living and that benefit completely lost.

I inquired yesterday what happens in the case of a veteran receiving assistance allowance in British Columbia and any other province that decided to supplement the Guaranteed Income Supplement? This will raise him above the ceiling.

Mr. Thompson: We are aware of the situation raised by Senator Phillips, and it is receiving very careful study.

Senator Phillips: I realize you are studying it. However, may I make a recommendation that the study not take as long as some have. The problem has to be solved quickly. We should reach a solution earlier than has been our experience with other studies.

Mr. Thompson: Mr. Chairman, I assure Senator Phillips, through you, that we have been meeting with respect to this. A meeting is scheduled for this afternoon in an effort to resolve the situation in a way that we hope will work to the advantage of the veterans concerned.

Senator Phillips: I believe it can be exempted under section 2 (b). You have the authority under certain sections of the act to exempt certain income.

Mr. Thompson: That is correct, by regulation.

Senator Phillips: You could exempt it as income under section 22, could you not? That section is being used to change this now.

The Acting Chairman: For the sake of those who may read our record and to make it meaningful to them, I wonder if Mr. Thompson might say a few words to describe the problem. I personally feel that our record might not indicate what we are discussing.

Senator Phillips: Have I been so indefinite, Mr. Chairman?

The Acting Chairman: What is the definite problem in British Columbia?

Mr. Thompson: The provincial government provides supplementation to certain individuals over the age of 65. This is based on a needs test in cases of exceptionally high costs for food, lodging and other general items. The needs test is rather close and the allowable amount of personal property is not as generous as under the War Veterans Allowance Act. Therefore it is not a simple case

of all War Veterans Allowance recipients over the age of 65 being eligible.

The problem is in determining how much of this money can in fact be exempted as income under the regulations. It is rather complex because of the way the supplement is made up, but certainly we are doing our best to find an early solution to the problem.

Senator Phillips: In my remarks yesterday I raised the question of nursing homes. This is a problem that I meet more and more in my correspondence. A veteran has to enter a nursing home and the War Veterans Allowance does not cover the complete cost. The difference has to be made up by the individual's family or the province. I feel that this regulation should be changed, that a family should not be penalized because the veteran has to enter the home and we should not pass the problem on to the provinces. I think it is strictly a matter for the Department of Veterans Affairs and I would like to know what is being done to meet this.

Mr. Thompson: I am not quite clear whether it is a matter that affects War Veterans Allowance or treatment under regulations for domiciliary care. I am not clear on which point it bears.

Senator Phillips: I refer to the situation of a veteran who suffers a stroke and is hospitalized. Unfortunately there are insufficient hospital beds to accommodate such a patient and he is transferred to a nursing home. While in the hospital he has received full treatment, which was paid for, once he is transferred to a nursing home the payments are discontinued, and I believe this to be wrong.

In Prince Edward Island the nursing homes are largely operated by a provincial Crown corporation. The veteran must sign over his War Veterans Allowance to that corporation and then the province requests the family, if they are able, to make up the difference. In the event the family is unable to do this the province does. This difference is that between the normal charge to a patient in the nursing home and the amount received under War Veterans Allowance.

Dr. Hodgson: This is really another question of policy, as to what changes should be made in the present provisions. I am unable to make any comment, except to say it is something that officials will study, but it is difficult to predict what the outcome of that study might be.

Senator Phillips: You sound very much like a minister answering a question rather than a deputy minister! I will move on, then and ask another question. What kind of investigation is carried out when someone applies for GIS?

Dr. Hodgson: GIS is operated by the Department of National Health and Welfare and we do not really have first-hand information on the extent to which they investigate. We do know, however, that a person may not apply for GIS until he has already been taken on the rolls for OAS, so they have some basic information on him before his application for GIS is officially received. What happens after that I do not know.

Mr. Thompson: We have no way of knowing; we do not process it.

The Acting Chairman: That is the responsibility of National Health and Welfare. My own impression is that the recipient must on his application form submit his total income and justify his need for this supplement. The department carries out spot checks here, there and everywhere at different times. I think that is how they keep check, by spot checks.

Senator Phillips: When a veteran becomes a recipient of war veterans allowance he has to prove his inability to work, his lack of income wants. Are we forcing him to do that again and subjecting him to this humiliation maybe twice in two years, or have you made some arrangement with National Health and Welfare to accept the application as accepted for war veterans allowance?

Mr. Thompson: To my knowledge there is no such arrangement, but it is my understanding that the GIS does not go into a detailed individual examination of each case. The war veterans allowance recipients who are established as recipients and are over the age of 60, or 55 in the case of a widow, are not interviewed and questioned and visited each year. This is something that is done at the discretion of the district officers, but it is not done on a regular annual basis. I believe, too, that GIS may make use of verification of assets or verification of income through the income tax records, which undoubtedly would save a good deal of their investigation.

Senator White: I should like to ask Dr. Hodgson two more questions. I understand that at the present time the age is 60 for veterans applying for allowances and 55 for a widow. Now that the old age pension age is reduced to 65, has there been any consideration or discussion of the question of reducing the age for a veteran from 60 to 55 and the widow from 55 to 50?

Dr. Hodgson: I am not aware of any discussion on changes in the age. It will be appreciated that totally disabled under those ages may also be considered eligible.

Senator White: I have been looking at the report of the committee of the other place. In the minister's statement, where dealing with change in the regulations, in speaking about certain payments, he says:

This will also mean that they will remain eligible for consideration under the Veterans' Burial Regulations provided that, before death, they have been found eligible for WVA if it were not for OAS or GIS that was or could have been in payment.

The words I want you to explain are:

provided that, before death, they have been found eligible for WVA.

Does that mean they would have had to have made an application, or does it mean that on examination of what their assets were, if it had not been for the old age pension and GIS they would have been eligible for allowances?

Mr. Thompson: As it stands over the years, since the treatment regulations were amended to permit of treatment being given to those who but for OASP or GIS would be eligible for treatment by the department, it has been our longstanding procedure whereby the person makes application and receives a ruling to the effect that but for OASP and GIS he would be eligible for war veterans allowance, that then clears the way under treatment regulations to be treated. The same procedure is provided for in the burial regulations. If a person receives that ruling, it is on the record at the time of death and the way is cleared for the burial regulations to apply.

The Acting Chairman: Could you elaborate a little on the treatment regulations? Does the War Veterans Allowance Board draw up its own treatment regulations or do you adopt the treatment regulations of the Pension Commission or the department as a whole? Is there one set of treatment regulations that applies right through the department or does each body draw up its own?

Mr. Thompson: There is one set of treatment regulations that applies.

The Acting Chairman: And that is passed by order in council?

Mr. Thompson: That is correct.

Dr. Hodgson: These are regulations under the Department of Veterans Affairs Act. The section of the regulations under discussion is section 12, which says that treatment may be given to a veteran whose service limited income and other circumstances would entitle him to be a recipient under the act if the pension being paid to him, his spouse, or both under the Old Age Security Act was deducted from his income.

Senator White: When you replied to my question about the ruling, I was not quite clear. Did you infer or mean that the veteran would have had to make an application and had some ruling in his lifetime, and after he dies nothing could be done then?

Mr. Thompson: Yes, this is correct.

Senator White: So if a veteran dies and has not made this application and got a ruling in his lifetime, none of these things would apply?

Mr. Thompson: This is so. It stems from the fact that the person normally in his lifetime, in order to benefit from the department's provisions for treatment, obtains a ruling that but for OASP and GIS he would be eligible for war veterans allowance. That entitles him to treatment during his lifetime. The burial regulations are merely, one might say, an extension of that principle.

Senator White: I think the statement said that you were going to put a full page advertisement in the Legion magazine explaining the change. Would you by any chance have a draft copy of that, or could you explain what has been covered?

Dr. Hodgson: A full page ad that has been put in the Legion magazine. I do not have it here. It refers principally to the many amendments that were recently made in the Pension Act.

Senator White: Will there be an advertisement about the changes in the War Veterans Allowance Act?

Dr. Hodgson: I am unable to comment on that. I am aware of the full page ad, which principally refers to the many changes in the Pension Act. However, we are doing everything we can to make sure that all these veterans are informed how they would be affected. We have been doing this since January, and will continue to do so on a person to person basis for every individual.

Senator Inman: Would it be possible to have copies of that advertisement supplied by the department?

Dr. Hodgson: I will make a note and supply copies for the committee.

The Acting Chairman: Thank you.

Senator Phillips: I wonder how many veterans over age 65 will be affected by the change in regulations?

Dr. Hodgson: Mr. Chairman, we did a rough calculation some little time ago and at that time we believed that between 12,000 and 15,000 veterans would cease to be recipients under WVA but would be in this other category of persons who would be eligible for WVA if they were not receiving OAS-GIS, and about another 40,000 whose payments from us would be diminished because they would be getting funds under the Old Age Security Act, but of course their total funds, taking the two together, would be greater because of the 15 per cent increase in WVA.

Senator Phillips: So 55,000 veterans have been affected by a change in regulations rather than a change in legislation. How many veterans who were receiving a small percentage of disability pension and war veterans allowance to bring them up to the maximum will be removed from the war veterans allowance as a result of applying for OAS and GIS?

Mr. Thompson: We would not have that figure on a breakdown, Mr. Chairman, because the amounts would vary. We do not have a separate breakdown.

The Acting Chairman: While you are on this subject of widow's allowance, is the widow's allowance under the War Veterans Allowance Act comparable with the widow's pension under the Pension Act?

Mr. Thompson: No, Mr. Chairman, the widow's allowance under the War Veterans Allowance Act is not as high as the widow's pension under the Pension Act in the same way that the maximum rate under the War Veterans Allowance Act for a single person is not the equivalent of the maximum 100 per cent pension.

The Acting Chairman: What is the average age of First World War veterans who get WVA?

Mr. Thompson: The average age of World War I recipients is 76.9 years.

The Acting Chairman: Practically 77 years. How many World War I veterans are left now that have applied and have been disqualified under the 365-day clause?

Mr. Thompson: I could not answer that, Mr. Chairman. I am not certain that we would have figures that would reveal that. I am not certain that records are maintained on that basis. Once they are on and eligible, they are recipients. If they applied and were not eligible on those grounds, it would be the same as though they were not eligible for some other grounds.

The Acting Chairman: I was just wondering if any cost estimates have been made recently for including them. If we eliminated that 365-day clause, what would be the extra expense? There has been no estimate made on that?

Mr. Thompson: I have no knowledge of that.

Senator Phillips: What is the average age of World War II veterans?

Mr. Thompson: The average age of World War II veterans is 52, and the average age of World War II recipients is 59.5 years.

The Acting Chairman: I have one more question about a problem I have come across a number of times. It applies mostly to troops who served in the Imperial Forces, and it applies to all Newfoundland veterans, because they were part of the British forces. They receive the war veterans allowance and at the same time they have applied for a disability pension. This is usually a slow process with the British authorities, particularly if the first application is rejected, and there is an appeal. It sometimes happens that after a person has been on war veterans allowance for four or five years, he suddenly finds that he has got an award from the British authorities of \$500, \$600 or \$1,000, and that represents an overpayment. If he had been receiving the maximum under the War Veterans Allowance Act, this windfall which comes in constitutes an overpayment. It is out of his control, but he has to repay this. Very often it causes a lot of hardship. I am wondering if anything is being done to alleviate cases like this, and to ease the burden on them?

Mr. Thompson: Mr. Chairman, the degree to which it would cause an overpayment would depend in part on when he received it in relation to his veterans allowance year. It gets rather complicated to explain, but the point is that if he receives it during his allowance year it is of necessity treated as any other piece of income received during that year, and has to be taken into consideration. There is no provision at the present time by which it could be treated any differently from any other money he would come by.

Senator Phillips: If I may, Mr. Chairman, I would like once more to emphasize the fact that, unless the regula-

tions are changed, and if the 2 per cent increase in the cost of living index allowance is not changed, by the time the average World War II veteran reaches 65 the difference between the recipient of war veterans allowance and the civilian receiving OAS and GIS will be completely eliminated. I want to impress upon the officials that this is a matter for consideration and study within the department.

The Acting Chairman: I am sure they will make a note of that, Senator Phillips.

Senator White: If we are through with the War Veterans Allowance Act, I would like to ask a question about the Pension Act.

The Acting Chairman: We are taking all three acts together.

Senator White: I would like to ask Dr. Hodgson as to the flat increase of 10 per cent. You will recall that the Woods Committee report said that the basis should be the labourer in the Public Service of Canada. Have you any records as to the various wages paid labourers in various departments in the public service?

Dr. Hodgson: Mr. Chairman, the department does possess records. I do not have them here. It will be appreciated, of course, that the Woods Committee report made these recommendations, including a recommendation as to one possible basis for pensions. There has been no action taken to confirm that that recommendation is an official policy. It is merely a recommendation.

Senator White: What is the official policy? Does it go back to the very beginning in 1918-19 that it was just the wages in the common labour market. Was that the yardstick?

Dr. Hodgson: The 1919 statement was made by an official, but it was not necessarily an official statement by a government. Even at that time it was merely somebody's opinion.

Senator White: What do you take as your yardstick in making it 10 per cent? Why is it not 5 per cent or 20 per cent?

Dr. Hodgson: The Government took various things into consideration. It might be useful to note that between January, 1968 and December, 1970 the consumer price index rose by 9.9 per cent, which is almost exactly the amount selected as the pension increase. It might also be of interest to the committee to know that since 1964 the consumer price index has gone up a total of 27 per cent while during the same period pensions have gone up 60 per cent. In other words, the cost of living is only one of a number of considerations that affect the Government in making its decisions.

Senator White: Is it then correct to say that the basic pension is not tied to any other wage scale?

Dr. Hodgson: Mr. Chairman, there has been no official statement at any time that pegged the pension in relation to any other single index.

Senator White: I presume the wages paid on the common labour market are all examined, though, are they?

Dr. Hodgson: Yes, they are.

Senator Robichaud: Mr. Chairman, I move that we report the bills without amendment.

The Acting Chairman: We have a motion to report the bills without amendment. Is it agreed?

Hon. Senators: Agreed.

The Acting Chairman: Thank you very much.
The committee adjourned.

APPENDIX "A"

Department of Veterans Affairs

Deputy Minister

Ottawa, Ontario,

K1A 0P4,

7 April 1971.

The Hon. C. W. Carter,

Acting Chairman,

Senate Committee on Health, Welfare & Science,

The Senate,

Ottawa, Ontario.

Dear Senator Carter:

As promised at the Committee meeting this morning, I enclose a supply of copies, in both official languages, of an advertisement which has already appeared in LEGION and will also appear in other veterans publications when they go to press.

Also enclosed are draft copies of an advertisement which is now in the hands of our advertising agency for insertion in veterans publications and certain week-end supplements and farm publications in both official languages.

Yours sincerely,
J. S. Hodgson,
Deputy Minister.

HIGHER PENSIONS AND WVA RATES IN EFFECT APRIL 1st, 1971

Last December the Honourable J. E. Dubé, Minister of Veterans Affairs, announced that, subject to the approval of Parliament, the basic rates for Pensions for disability and death will be increased by 10 per cent and War Veterans Allowances by 15 per cent on April 1, 1971. At the same time WVA ceilings will be raised by amounts equal to the rate increases; and the pensions and allowances, paid under the Civilian War Pensions and Allowances Act, will be aligned with their counterparts in the Pension Act and the War Veterans Allowances Act.

The present and the proposed new rates for 100 per cent disability pensioners, widows and orphans on a yearly basis, are shown in the following table:

	Present	Proposed April 1, 1971
100% Disability—	\$	\$
Single (no dependents)	3,180	3,504
Married (no children)	4,056	4,464
Married, one child	4,464	4,920
Married, two children	4,776	5,256
Each additional child	240	264
Dependents of Deceased Pensioners—		
Widow (widower)	2,400	2,640
One orphan	816	912
Two orphans	1,440	1,584
Three orphans	1,920	2,112

The present and the proposed new rates and ceilings for WVA recipients, on a monthly basis, appear below:

	Present	Proposed April 1, 1971
Single Recipient—	\$	\$
Income ceiling	145	161
Maximum allowance	105	121
Married Recipient—		
Income ceiling	245	271
Maximum allowance	175	201
Orphan Allowances—		
One orphan	60	69
Two orphans (one veteran)	105	121
Three orphans or more	141	163

When the new rates and ceilings go into effect the WVA regulations will be changed to provide that recipients, who are eligible to receive Old Age Security payments and Guaranteed Income Supplements—which are also being increased in April—will be deemed to be receiving the full amounts to which they are entitled under those programs.

This means that WVA recipients who are 65 or over, and who are eligible for Old Age Security and possibly the Guaranteed Income Supplement as well, should apply now if they haven't already done so. If the recipient has no other income, the difference between his combined OAS and GIS payments and his WVA income ceiling will be paid as an allowance.

Only by ensuring that they have applied for all they are entitled to under the OAS and GIS programs can WVA recipients be assured that their incomes will continue at the maximum levels.

Application forms for OAS payments may be obtained from any post office in Canada, and GIS application forms are sent automatically to OAS recipients by the Department of National Health and Welfare.

Published under the authority of
The Honourable J. E. Dubé,
Minister of Veterans Affairs

For Disabled Veterans, Widows, Orphans

PENSION ACT AMENDED

The Pensions Act, under which the Government of Canada pays compensation for death and disability related to military service, has been amended extensively to provide many improved benefits for disabled veterans and their families, and for the widows and orphans of those who have died. Some of the more significant improvements include:

—A new three-level adjudication procedure; initial hearing and entitlement hearing by Canadian Pension Commission with final appeal to new Pension Review Board;

- New and additional allowances for exceptionally incapacitated 100 per cent pensioners;
- Special provisions for all former prisoners of war of the Japanese;
- New and independent Bureau of Pensions Advocates replaces Veterans Bureau;
- The intent of the “benefit of the doubt” clause defined and incorporated into the Act;
- Additional pensions provided for pensioners who suffer loss of “paired” organ, regardless of cause;
- Provision for widows to initiate or reopen claims in respect of their deceased husbands;
- Presumption of fitness on enlistment (subject to rebuttal);
- Removal of time limits for pension claims under Civilian War Pensions and Allowances Act; and

—New rules respecting claims for disability and death related to Regular Force service.

Request for more information about these and other benefits in the Act, and applications for them, should be sent to your:

—Senior Pensions Medical Examiner or District Pensions Advocate

or to

—The Chief Pensions Advocate, Ottawa, Canada, KIA OP4 or

—The Secretary, Canadian Pension Commission, Ottawa, Canada, KIA OP

Published under the Authority of
The Honourable J. E. Dubé,
Minister of Veterans Affairs.

APPENDIX “B”

THE ROYAL CANADIAN LEGION
LA LÉGION ROYALE CANADIENNE

6 April 1971

J. A. Hinds, Esq.,
Assistant Director,
Committees Branch,
The Senate,
OTTAWA.

Re: Bills 232 - 3 - 4

Dear Mr. Hinds:

This will confirm the details of our brief telephone conversation.

The Legion does not propose to make representations before the Senate Committees concerning the Acts to

amend the Pension Act and the Civilian War Pensions and Allowances Act.

Yours truly,

Kerry John Dunphy,
SERVICE OFFICER.
(for) Director—Service Bureau.

April 6th, 1971

Mr. Hinds

This is to advise that the National Council of Veteran Associations does not wish to present a brief to the Senate Committee in regard to the three veteran's bills.

Kind regards.

H. C. Chadderton,
National Secretary
National Council of Veteran Associations

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THIRD SESSION—TWENTY-EIGHTH PARLIAMENT

1970-71

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING SENATE COMMITTEE ON
**HEALTH, WELFARE
AND SCIENCE**

The Honourable CHESLEY W. CARTER, *Acting Chairman*

No. 7

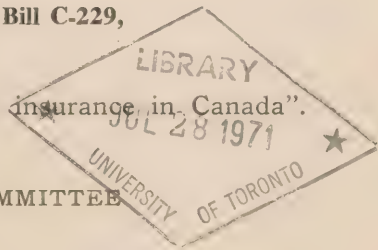
TUESDAY, JUNE 22, 1971

Complete Proceedings on Bill C-229,
intituled:

"An Act respecting unemployment insurance in Canada".

REPORT OF THE COMMITTEE

(Witnesses:—See Minutes of Proceedings)



THE SENATE COMMITTEE ON
HEALTH, WELFARE AND SCIENCE

Chairman: The Honourable Maurice Lamontagne

The Honourable Senators:

Bélisle	Inman
Blois	Kinnear
Bourget	Lamontagne
Cameron	Macdonald
Carter	McGrand
Connolly (<i>Halifax North</i>)	Michaud
Croll	Phillips
Denis	Quart
Fergusson	Robichaud
Fournier (<i>de Lanaudière</i>)	Roebuck
Fournier (<i>Madawaska- Restigouche</i>)	Smith
Hastings	Sullivan
Hays	Thompson
	Yuzyk—(27).

Ex officio Members: Flynn and Martin

(Quorum 7)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, Monday, June 21, 1971:

The Order of the Day being read,
With leave of the Senate,

The Honourable Senator Haig resumed the debate on the motion of the Honourable Senator Connolly, P.C., seconded by the Honourable Senator Kinnear, for the second reading of the Bill C-229, intituled: "An Act respecting unemployment insurance in Canada".

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Connolly, P.C., moved, seconded by the Honourable Senator Kinnear, that the Bill be referred to the Standing Senate Committee on Health, Welfare and Science.

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

ROBERT FORTIER,
Clerk of the Senate.

Minutes of Proceedings

Tuesday, June 22, 1971.

(7)

Pursuant to adjournment and notice the Standing Senate Committee on Health, Welfare and Science met this day at 9.50 a.m.

Present: The Honourable Senators Blois, Carter, Croll, Denis, Fergusson, Flynn, Hays, Inman, Kinnear, MacDonald, Martin, McGrand and Smith. (13).

Present but not of the Committee: The Honourable Senators McDonald, Connolly (*Ottawa West*) and Lafond. (3)

On Motion of the Honourable Senator Fergusson, the Honourable Senator Carter was elected *Acting Chairman*.

The Committee proceeded to the consideration of Bill C-229, "An Act respecting unemployment insurance in Canada".

The following witnesses were heard in explanation of the Bill:

Unemployment Insurance Commission:

Mr. J. M. DesRoches,
Chief Commissioner.

Mr. David J. Steele, Director General,
Planning, Finance and Administration.

The following were also present but not heard:

Mr. J. W. Douglas,
General Legal Counsel.

Mr. J. C. Charlebois, Director,
Agency Liaison Policy,
Administrative Services.

On Motion of the Honourable Senator Smith, it was *Resolved* to report the said Bill without amendment.

On Motion duly put, it was *Resolved* that the Committee would not hear additional witnesses with respect to this Bill.

It was *Resolved* to print 800 copies in English and 300 copies in French of these proceedings.

At 12.10 p.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Denis Bouffard,
Clerk of the Committee.

Report of the Committee

Tuesday, June 22, 1971.

The Standing Senate Committee on Health, Welfare and Science to which was referred Bill C-229, intituled: "An Act respecting unemployment insurance in Canada", has in obedience to the order of reference on Monday, June 21, 1971, examined the said Bill and now reports the same without amendment.

Respectfully submitted.

Chesley W. Carter,
Acting Chairman.

The Standing Senate Committee on Health, Welfare and Science

Evidence

Ottawa, Tuesday, June 22, 1971.

The Standing Senate Committee on Health, Welfare and Science, to which was referred Bill C-229, respecting unemployment insurance in Canada, met this day at 9.30 a.m. to give consideration to the bill.

Senator Chesley W. Carter (*Acting Chairman*) in the Chair.

[*Translation*]

The Acting Chairman: My dear colleagues, I thank you very much for your confidence, and I hope that you will have no regrets.

Senator Flynn: I don't believe so.

The Acting Chairman: Thank you.

[*Text*]

Honourable senators, I have here a telegram addressed to the Speaker of the Senate from a person named Kroeker, a name which will probably ring a bell with some of you. As I recall, he is a former civil servant. He signs himself as president of a group called Canadians for Responsible Government. His communication is not too clear, but I will put it on the record. It appears that he wants to come before the committee and dispute the costs of Bill C-229. I will read it slowly, because it is not too lucid:

Please inform all senators that the House of Commons has approved unemployment legislation in ignorance of or deliberate disregard of its full financial consequences an annual deficit of from four hundred million dollars to one thousand million dollars estimate by responsible citizens who offered to appear before the Commons committee and the minister in this regard has been ignored these witness are available to the Senate please consider fully before approving this unemployment insurance legislation with its large and long lasting damages to Canadians

John Kroeker President Cdn for Responsible Government

Senator Smith: Mr. Chairman, may I say something at this juncture? It will be recalled that when Senator John M. Macdonald spoke in the Senate, I presume as the spokesman for the Opposition, he made particular reference to the discussion in committee, and perhaps I should quote what he said:

—since we are approaching the time of adjournment I expect a long study will not be possible. Fortunately, I do not think one is necessary, as the committee of the other place had both the time and inclination to go over the bill in detail. We have the reports of their deliberations, which make very interesting and instructive reading.

I personally agree with what Senator Macdonald said. I believe it will be impossible for us to consider hearing a witness who represents nobody but himself, and in particular who writes that kind of telegram with reference to the House of Commons which is not permitted by even members of the Senate. If you want a motion, I will move that we proceed with the bill.

Senator Flynn: We should certainly proceed to hear the witnesses who are here.

The Acting Chairman: Shall we let this lie in abeyance? I was going to say, this committee does not have a steering committee. Had there been a steering committee they could deal with this sort of thing and make a report. Would it be worth while to have a small committee to look at this?

Some Hon. Senators: No.

The Acting Chairman: Or should we dispose of it now?

Senator Flynn: Not at this time. Let us proceed with the witnesses, and we can see afterwards. We can always inquire about the contentions contained in this telegram.

Senator Connolly (*Ottawa West*): The questions can cover that.

The Acting Chairman: We have before us a witnesses Mr. J.M. DesRoches, Chief Commissioner, Unemployment Insurance Commission, and Mr. David Steele, the Director General, Planning, Finance and Administration. I understand the minister will be coming soon. In the meantime Mr. Peter Connolly is representing his office. Shall we proceed with the witnesses?

Hon. Senators: Agreed.

The Acting Chairman: Before Mr. DesRoches begins his presentation, I should like to point out that this is a formidable bill. It has 160 clauses and some schedules beside that. It covers about 100 pages. It is divided into eight parts. It occurs to me that some parts would be of more interest to this committee than other parts. For example, Part I, the Unemployment Insurance Commission, sets up the Unemployment Insurance Commission itself. That has been in operation for a good many years.

Part II Unemployment Insurance Benefits, Part III Contributory Premiums, Part IV Collection of Premiums, and Part V Administrative Machinery would probably be the parts of most interest to this committee. Part VI Financial Provisions, which includes the funding, Part VII Employment Service, Part VIII Transitional and Repeal Provisions and the schedules are probably not of the same interest. Perhaps we might concentrate on those parts that contain the meat of the bill, in view of the limited time at our disposal. Is that agreed?

Hon. Senators: Agreed.

The Acting Chairman: I presume in his presentation Mr. DesRoches will deal with the new parts of the bill, the innovations and new departures included in Bill C-229, that were not part of the old Unemployment Insurance Act.

Mr. J. M. DesRoches, Chief Commissioner, Unemployment Insurance Commission: Mr. Chairman, honourable senators, I do not have a prepared statement, but perhaps I can briefly outline the history behind the preparation of the bill.

I am sure the committee members will remember that there was a committee of inquiry appointed in 1961 or 1962 under the chairmanship of Mr. Gill, which was composed of Mr. Gill, Dr. Deutsch and a number of other citizens, who reviewed the whole field of unemployment insurance. This was after the fund went into the red, I think somewhere in the sixties or late fifties, and the committee presented its report in the early sixties.

Following the presentation of that report there were a number of interdepartmental studies. I am not sure if the Senate looked at it at the time, but a number of groups reviewed the recommendations of Mr. Gill's committee, and a number of associations outside presented further briefs, either for or against the Gill Report. As a result, there was a great deal of review and activity of that type, which went on until about 1965, when a final interdepartmental committee report was drafted, but I do not think it was ever formally given to the government. That is where the matter lay. There were a lot of suggestions made, recommendations made and counter-proposals, but all of them were in abeyance until early 1968, when we began a fresh study. We had all these earlier proposals and recommendations, and at that time we began a research study. The approach we followed was to gather a group of people from inside the organization and from outside—from universities and management, consulting firms, actuarial firms, and so on. We gathered this team together and began looking over the previous recommendations to see where one could find room for improvement in the act or in the program as a starting point.

This study lasted perhaps a year. It started early in the spring of 1968 and by 1969 it had pretty well finished its planning. The main basis of its work was a mathematical model built composed of data obtained from various sources in the Government. This data was put together in a computer and samples of it were used. First of all, about 250,000 case samples of people were used including all the various characteristics such as occupation, meth-

ods of work, periods of employment and unemployment, levels of salary and so on. All this data was used to sample a fairly large group of people. From these samples various sub-samples were taken to arrive at some means of estimating the impact of the present program, to determine what changes or improvements could be made in the program, and to test both the validity and the cost of these various improvements. So there was a fairly solid base.

There were two main samples of about 27,000 cases used to monitor and control the cost of the program. They were used to determine the impact of various suggestions or recommendations made to the Government.

The upshot of all this study and the building of this model and the use of the samples which were taken was the proposal which we made to the Government in the middle of 1969. I might indicate that the samples taken went beyond this model I referred to. Some samples were taken in industry, for example, to determine the patterns of employment and unemployment there. As you know, there is a feature of experience rating here which was based on samples taken from a number of industries. There was a lot of study of this type based on fresh data and this together with a fresh approach to the situation eventually led to the proposal we made to the Government in the middle of 1969.

It took a period of study at the ministerial level, the inter-departmental level and, eventually, the cabinet level before the Government approved the issue of the White Paper in June of 1970. Actually, it was approved perhaps in January of 1970, but it was ready for release in June of 1970.

The White Paper incorporates all the policies that the Government approved, and I think you will find that most of the policies outlined in the White Paper have been incorporated in Bill C-229. As you know, the White Paper was the subject of fairly extensive review by the house committee.

Senator Connolly (Ottawa West): How long did that last, Mr. DesRoches?

Mr. DesRoches: It started in June. The moment the White Paper was released the chairman of the house committee issued letters to all those who had submitted briefs, including those to the Gill study and others submitted over the years. You are aware that each year the CLC, the CMA and the Chamber of Commerce make briefs in which they include references to UIC. Well, the chairman issued his letters immediately following the release of the White Paper on June 17, 1970, or very close to that, inviting submissions from those people who had submitted briefs before and from the public in general. Ads were published inviting briefs.

Through the summer of 1970 formal briefs and letters came in. Fifty-eight formal briefs were tendered and the committee began its study in early September before the house resumed last fall. The committee reviewed and heard each and every one of the presenters of briefs. There were 43 actual oral presentations and there were approximately 25 sessions held in all.

The committee then prepared its report in December, 1970, and following that Bill C-229 was drafted and presented to Parliament. Again there were approximately 20 sessions of the house committee when the bill was in this form.

That is the general background to this whole matter.

I should now like to highlight in general terms the main features of the bill that are new. After that I will go through the bill clause by clause, if you desire.

One of the basic aims, which has been a thread right through all the studies from Mr. Gill right down, was that there should be a clearer distinction between the insurance side and the welfare side. I know there are people who will say today that this is more confused than it was before. I suppose it is a matter of opinion. They believe insurance is what they know as insurance. I have heard statements recently where somebody says insurance involves savings. To the person who says insurance involves cash surrender value or savings, that is his concept of insurance. Somebody else will say that insurance does not involve merit rating, and yet many forms of insurance involve merit rating. Many forms of insurance do not involve savings. So that is sort of a futile approach in many ways.

That approach is like probing the word "welfare". Some people will say that, if it is something given, it is welfare; that you must earn it. But how you earn it is very difficult to define. We tried to resolve such issues by having a program which would hold to the principle of insurance in the sense that people would pay contributions and would protect themselves against certain risks. In return they would be guaranteed certain benefits. Basically, we hold to that principle of insurance; and that makes it different from something which is payable due to the condition of the individual rather than by the risk which is involved, or according to a certain occurrence which cannot be predicted.

The main method of clarification was to separate the costs. The separation of costs is one of the main elements of separation of insurance and welfare in the plan, in the sense that the plan is self-financed up to a 4 per cent unemployment level by employers and employees. Our costs were estimated to make this come about. Beyond that point the charges for people who are still unemployed and still need help are made directly upon the Government.

The main change so far as coverage is concerned is in the direction of universality. The amendments that were processed in the last days in the house, whereby the Commission can now by regulation include people in self-employment and people who are appointed by tenure—such as senators and judges, I presume—would give the whole concept of universality a fairly complete sway over the whole plan.

As it stands now the plan is universal for people who have an employee-employer relationship; that is, who work for an employer. But these amendments would permit us to extend the concept to self-employed people and to people with tenure.

The benefits, of course, have been raised and have been related to the man's income on the ratio of 66⅔ per cent of average earnings over the base period.

The net percentage has been calculated to reflect the type of benefits or the type of earnings or income that the person would need to meet his non-deferrable expenses. Basically, in the initial stages for people at certain levels of income, the benefits would be at 66⅔ per cent. In other words, the man would be expected to be able to carry on for a period of 25 or 30 weeks minus one-third of his income, and this would be reasonable on the basis of the studies that have been made of certain costs that he can defer.

Senator Connolly (Ottawa West): Mr. DesRoches, you did some studies to justify the proposition that a payment of two-third of the weekly wage is an adequate payment. The maximum for this purpose is \$150 that there would be a ceiling of 100 in any event for the initial period of the benefit. Is that so?

Mr. DesRoches: That is so.

Senator Connolly (Ottawa West): There were studies made. It is not simply a guess.

Mr. DesRoches: There were studies, yes. In fact, there were a lot of outside studies. We gave to the house committee a statement which contained specific references and we could make this available to you, if you like. These were specific references to a number of authors in the universities and those who have made private studies of this particular problem of how much and how high the benefits should be for a person who is without his regular income. It hovers between 60 and 75 per cent. You will recall that Gill recommended 60 per cent, but it was not taxable, so 66⅔ per cent that is taxable is roughly the same. But we have added the feature of moving up to 75 per cent after the 25th week, because at that point the person is deemed to require more income.

Senator Connolly (Ottawa West): Is that only in the case of persons with dependents?

Mr. DesRoches: Yes, for persons with dependents. Similarly, people with dependents who have an average income of \$50 or less are also entitled to the 75 per cent rate in the initial period. These rates were studied to try to meet the different situations over and above the 66⅔ per cent base of what an average person can defer as far as his expenses are concerned; at later stages in the claim he can get 75 per cent, or if his income is low in the early stages, he can get 75 per cent. All this is subject to the maximum of \$100 a week, and of course to get the \$100 a week, a person must have average earnings of \$150 a week. Incidentally, the message got across somehow at certain times that the \$100 per week was a flat amount for everybody, and this was never intended.

Senator Flynn: Those who earn more than \$150 a week, do they pay the premium on the same percentage basis?

Mr. DesRoches: They pay on a percentage basis up to \$150 a week and then it is a flat amount beyond that point.

Senator Connolly (Ottawa West): No income beyond \$150 a week is subject to a levy for unemployment insurance?

Mr. DesRoches: Not at this time, but gradually it will increase, of course, because there are formulas in the act which will increase as average income increases. But at this time it is a flat rate. That percentage will apply gradually for higher income levels on a very, very gradual basis.

Senator Smith: What is the contribution for the maximum amount of wages on which a person makes a contribution?

Mr. DesRoches: According to the rates which the Minister has mentioned in the house which will be set next November it will be \$1.35 which means 90 cents per \$100. Therefore for \$150, it will be \$1.35. The rate is expected to be .9 per cent.

The Acting Chairman: In the case of a person whose income is in excess of \$150 per week, does he get the 75 per cent also when the 25 weeks have expired?

Mr. DesRoches: No, he would not, because effectively the limit of \$100 comes in first. That limit of \$100 is an absolute. So if he earned \$150 and was entitled to \$100, then that \$100 is all he would get.

The Acting Chairman: But if he earns \$200 and pays at the rate of \$150, the other \$50 is not considered?

Mr. DesRoches: No.

The Acting Chairman: Then he goes for 25 weeks at that rate of \$100. But when the 25 weeks are up, he does not go to 75 per cent of his earnings?

Mr. DesRoches: No, he does not because \$100 is the absolute barrier. I suppose the concept is that this is the maximum that this type of plan should pay.

Senator Hays: I suppose it is related to welfare and all other kinds of things.

Mr. DesRoches: It is related to what I suppose the judgment would be as to what the maximum amount should be under this type of plan. In other words, it is an income replacement for a worker who is out of work, and if a worker is out of work for 25 weeks perhaps his value changes on the labour market. I suppose that is the kind of reasoning behind it. I do not know what people would accept. The feeling was that \$100 would be the type of figure that will be acceptable as a maximum.

Senator Connolly (Ottawa West): Did Gill mention \$100?

Mr. DesRoches: He never used a maximum. He never mentioned a maximum. He used the same idea as that contained in the present act.

Senator Hays: These schedules are all in the back of the bill.

Mr. DesRoches: These are transitional schedules. The rates which will apply in 1972 would be struck in the fall of 1971. But these rates have been announced by the Minister. He has also mentioned this feature of deduction for medical plans. Now these are advance announcements in order that people, employers and employees, can plan, but they are not incorporated in the bill as such.

Senator Connolly (Ottawa West): The schedule in the back of the bill would only be applicable to the end of this year.

Mr. DesRoches: They are only transitional tables.

Senator Connolly (Ottawa West): And a new rate will be set, under the provisions of the bill which requires them to be set, towards the end of the year or early in 1972?

Mr. DesRoches: Yes.

Another feature beyond the higher benefit is, of course, the lower eligibility condition of the act. As you know, under the present act there is a number of ways of entering the system, or of becoming eligible. The general one is to have 30 weeks of employment in the last 104 weeks, eight of which have been in the last 52. In addition there are other conditions that apply. If a person has a claim, he must have had 24 eligibility or contribution weeks between his prior claim and the new claim he is making. In addition we have under the present act seasonal benefits which again follow special rules. There are two rules involved; one, the discontinuation or exhaustion of benefits in the spring, and the other one, the accumulation of a small number of contributions during the summer. These are generally the rules which apply at present. So basically there are five sets of rules, and what we have done is set up new rules for eligibility which now fall into two categories which are called minor attachment and major attachment. Major attachment is where a person has had 20 weeks in the last 52 weeks, that is 20 weeks of work or earnings because contributions are not the dominant feature anymore. Twenty weeks of earnings in the last 52 will entitle a person to all the benefits that are provided in the act, that is benefits for regular unemployment or lack of work, benefits for sickness and maternity and benefits for retirement. Below the 20-week entitlement we have a minor attachment, which refers to a person who has between eight and 19 weeks in the last 52. Such people are also entitled to come into the plan, but their benefits are tailored more to their attachment. They are not entitled to the sickness, maternity and retirement benefits, but they would be entitled to a block of benefits if the initial period, which is graduated and shown in the table on page 106.

They are entitled to a graduated entitlement in the initial period. Beyond the initial period they are entitled to those extended benefits which are provided for by the Government on the basis of the rate of unemployment in the country or in the various regions involved.

I refer to Table 1 in Schedule A on page 106, in which you will see that for weeks of insurable employment in the qualifying period of eight to 15 weeks, a person can draw eight weeks, and he is entitled to draw this sum over a period of 18 calendar weeks. He is entitled to draw eight weeks during an 18-week period from the start of his claim; and similarly for the others, until you get to 20 or more weeks, when a person is entitled to 15 weeks which can be drawn over a period of 29 weeks.

The Acting Chairman: These weeks of benefits do not have to be consecutive weeks?

Mr. DesRoches: That is right. That is the purpose of the middle column. It indicates the number of calendar weeks over which a person can draw the weeks in the third column.

The Acting Chairman: What happens when a person starts his benefit period in, say, November, and draws it under this schedule up to the end of the year. When the new rates come into effect, does he get a sudden jump?

Mr. DesRoches: This table is more than transitional. It sets the duration of benefits for the new act, both in the transition and beyond. There is a continuation which I have to explain. There are two or three ways of extending these benefits. Regarding the rate of benefit, there is a difference in the transition in that starting in January those people who are now in the plan will have an adjustment. Perhaps that is what you are referring to?

The Acting Chairman: Yes.

Mr. DesRoches: Benefits for the people who are now in the plan will in January be adjusted to a higher rate because the benefits will then become taxable. Therefore we have a special table in the bill to provide for that situation. For those who come into the system from July on, the table on page 106 will apply through the transition and forever.

This is what is called the initial period in the act. The initial period is this graduated entitlement, with a variable duration of benefit period which is in Table I. If a person has exhausted or has reached the term of this benefit and is still unemployed, he goes into a "re-established" period of 10 weeks, then he can go into an extended benefit period. Table 2 shows one of the conditions under which benefits can be extended. The re-establishment period of 10 weeks is not shown in the table.

With regard to a person who had, for example, 15 weeks in Table 1, there would be a further period of 10 weeks entitlement under what the act calls a re-establishment of the initial period. The initial period can therefore last up to 25 weeks for the person who has 20 weeks of work.

Beyond that point we have Table 2, which is the extension of the benefit period, the entitlement of a person based on his labour market attachment. Again, it is a graduated type of extension. The person who has worked the longest gets the most. This form of extension is to provide for those who have worked for longer periods, and, for example have greater difficulty because of their age or other condition.

Two further methods of extension are provided in the act, depending on the level of unemployment in the country and in the regions. These extensions are explained in the body of the act rather than in tables.

If the level of unemployment in the country exceeds 4 per cent, four weeks can be added to a person's benefit period. If it exceeds 5 per cent, then eight weeks can be added.

Senator Connolly (Ottawa West): That is not additional. That is four plus four?

Mr. DesRoches: Yes. At 4 per cent there is no extension, between 4 and 5 per cent there is an extension of four, and over 5 per cent there is an extension of eight, starting from the zero point.

Senator Connolly (Ottawa West): The 4 per cent is the figure produced by Statistics Canada on the national average unemployment rate?

Mr. DesRoches: That is right. The theory here is that a person has more difficulty finding work when the level of unemployment is higher. This is the basis for the first extension of the benefit period. Beyond this extension there are regional extensions and we are planning to have 16 regions. They will be appended to the regulations.

The Acting Chairman: While we are still on the question of weeks, how is a week defined? Does any seven-day period constitute a week? What happens if you have four days in a week? Would that be counted as a week?

Mr. DesRoches: The benefit week starts on a Sunday. It is a seven-day period starting with a Sunday.

Senator Connolly (Ottawa West): That is in section 2(1)(y) on page 3, which says:

"week" means a period of seven consecutive days commencing on and including Sunday;

The Acting Chairman: If a person works, say, four consecutive days beginning Sunday, and something happens to him on the other two days, would he lose that week?

Mr. DesRoches: No, he would not. His benefit week would start on the Sunday. However, his earnings during the first four days would be counted against him. It would be discounted against his waiting period. Waiting period is really served in money. Effectively he would have to serve a waiting period of so many days with no income.

The regional extension is similar to the national extension. It is longer, and is based on the rate which will be calculated for us by Statistics Canada in 16 specific regions across the country, which will be defined in regulations. We have maps showing these, if you are interested, Mr. Acting Chairman.

Statistics Canada will compile the rate of unemployment in each of these regions for us. If the rate in any one region is one per cent over the national average, a six-week extension will be possible; if it is two per cent over the national average, a 12-week extension will be possible; if the rate in the region is three per cent above the national average, an extension of 18 weeks will be possible.

All these benefits have a maximum of 51 in any one year, so by various combinations you cannot exceed 51. There are provisions for a basic initial period based on the attachment to the labour force—this variable table that I explained before. There is a re-establishment period of ten weeks for the person who has yet to find work at the end of whatever his entitlement is, 8 or 15 weeks. Beyond that point there are three forms of extension, one based on the attachment of the person to the

labour force, and two other forms of extension based on the national unemployment rate or the regional rate.

All these features were built-in in order to get away from the strict and rigid relationship of a one week of benefits to two weeks of work. The present act is built entirely on the relationship that if a person has worked two weeks he is entitled to one. This, of course, favours people who work for a long time. For people who have a very small attachment, who find themselves in a region where things are more difficult, it is purely arbitrary and there is no real logic behind it. The new formulae were built into the act to recognize that, as much as possible, benefits should be adjusted or tailored to meet the case of the individual when faced with unemployment. The package therefore includes various elements of time at work difficulties of finding work and so on.

During these periods of unemployment we propose under the bill to have a claimant assistance service, which will be a new method of reaching out to the unemployed and trying to direct him to other services of federal, provincial or municipal levels of government, or even private agencies. Clause 106 of the bill refers to this feature. Therefore, in addition to having the benefits, which are tailored to meet particular situations, we have included features which will permit directing people and helping them along the way while they are unemployed.

These are the main features of the benefit structure, going through it very rapidly. If you want discussion at this point, I will try to answer questions, otherwise I will continue with maternity and sickness.

Senator Smith: Before you leave this point, I was quite interested in your comments on the claimant assistance technique. Where will these officers be who will be functioning in that set-up, the claimant assistance technique?

Mr. DesRoches: They will be located at approximately 129 points across the country. I am reluctant to use the word "office", but I think the concept of the office we are now going to use is based more on a service to the public than a record-keeping type of office. On that basis we are extending our locations. We now have about 60 or 65 permanent locations; we will have 108 permanent locations in future. In addition, we will have about 67 temporary locations, where people will be serviced two or three days a week, depending on the circumstances.

Senator Smith: I was thinking of my own province of Nova Scotia, where there has been a set-up whereby people from the commission spent a couple of days at the end of, say, the lobster season in order to process the claims, which has been of great assistance. Would the offices from which these people would work be close to the locations where the Manpower offices now are?

Mr. DesRoches: We hope so. We are working in that direction. We will not have as many offices as Manpower, but we now have plans—and we have done this quite deliberately—with the Department of Manpower to locate together in the same building where this is feasible. This is the new trend, if you like, that wherever we open these service centres we will try to locate as closely as possible, if space is available and so on.

Senator Smith: Will this also mean the end of the sort of informal set-up, which is provided by people who make a study of the thing and assist in making out claims, where there is no unemployment insurance office?

Mr. DesRoches: No, we will still do that.

Senator Smith: You will still keep that?

Mr. DesRoches: Yes, we will still do that.

Senator Smith: That has been a very valuable function.

Mr. DesRoches: We certainly do this on, say, mass lay-offs. We would still go out to the plant and try to anticipate the flow of claims where there is a particular situation in the industry. Indeed, this should not prevent but rather accelerate this type of service, where people go out to the work place and try to work out the relationship.

Senator Smith: I am thinking of some of the small towns where there is no unemployment insurance office. In the past there have been people appointed to serve the unemployed who want to make claims and have difficulty with them; they cannot do it by mail. I think it has been quite useful. Will these people continue on?

Mr. DesRoches: Yes. There are 261 of those. These are agents, and they will continue. They have multiplied in the last few years. They provide a useful link for us, and I think a useful link for the people in filling out the forms.

Senator Smith: I think they do.

Mr. Desroches: By the way, as part of our staff training to carry out the provisions of the new bill we are training these agents as well to cope with the new forms.

The Acting Chairman: I should like to follow up on Senator Smith's line of questioning. In my province of Newfoundland, we have many outlying communities where there are very slow mail connections, and it takes them a week, sometimes two weeks in the winter, to get a claim into the office. I understand that several years ago the set-up was changed so that these claims were processed in Moncton; the data on the claim had to be sent to Moncton for processing and then come all the way back to St. John's and then out again to the outlying places. Many people complained about this; they thought this was a pretty slow process. It meant some of them would be perhaps a month, sometimes six to eight weeks, before they could get any benefit. In the meantime, of course, they were on welfare, which eventually had to be paid back, which created a hardship at the time. All this was because of the slowness. Is there any change in that type of set-up?

Mr. DesRoches: There is no real change in that, but I would like to clarify a point here. There have always been five points in the country where we have maintained records, because of the lengthy base period involved, and where we must refer each claim to determine what record of contribution the man has had. This has always existed, the reference in the Maritimes is to Moncton. In other places it would be Winnipeg or Van-

couver. In Newfoundland we maintain—I am not sure if we are still maintaining—a separate data processing establishment in St. John's, Newfoundland.

I am aware that we have delays. I would not dare deny that we have delays. Statistically, our delays should not be as numerous as we hear they are. Our weekly reports keep indicating that between 97 and 98 per cent are paid within three weeks, which is the absolute minimum time in which we can pay. Obviously, that leaves 2 or 3 per cent who get caught in the longer cycle. We are always trying to reduce that time, but there is no basic change that will eliminate it entirely. There is no real way we can short-circuit this, unless we could make a payment in each locality, which is hardly conceivable in this day and age. We are trying all the time to improve the service by cutting down the time factors, however.

The Acting Chairman: It occurs to me that your new act is going to be very much more complex and that the computations, data and transitional rates will add just that much more complexity to the administration of the new act than there was previously. If you have all this trouble with the old act in its simple form, will you not have even greater trouble now?

Mr. DesRoches: Not necessarily so. Part of the difficulty of the delay, and this occurs quite often in the winter, is the fact that we have to have records of contribution to demonstrate that a person is entitled to a benefit. Those records are accumulated once a year. They are built up into large files at five locations. However, in future the person becoming unemployed will have to demonstrate to us that he has had earnings, and a statement to that effect will be given to the unemployed person by his employer on separation. We will rely on the separation statement rather than on records that have been accumulated in the past.

Two things will occur at that point, Mr. Chairman. First of all, we can always get over all the problems and put the person on pay so long as we have eight valid weeks of earnings and contributions. If we do not have the total record we can process and get the person on pay on that basis.

So far as the difficulty with welfare is concerned, the act provides that, with the permission of the individual and a statement to the municipality or to the province concerned—and we have not worked out the full details on that—we can assign the benefits. We could not do that before. We will now be able to make arrangements with the welfare agencies so that, if they pay somebody to tide him over, that person will be able, voluntarily, to assign his future unemployment insurance benefits to the municipality, or to the province as the case may be. Again, that could ease the situation where a person has to get welfare.

We realize that there will always be cases of delay. We will never eliminate them. However, if welfare will tide a person over, at least the welfare agency will not be risking, as they are now, not being paid back.

The Acting Chairman: There is a problem there. As an example, take a man with a large family in a low-income area where his wages are lower than normal. His benefits

are proportionately lower. However, when he is on welfare with a big family he will get much more than he would get from the benefits. When he then gets his benefits and has to pay back the welfare, that leaves him in a terrible position. It would be better if he had never seen the unemployment insurance, because he has to pay back a high rate of welfare out of a low income from unemployment insurance, and that is a tremendous hardship.

Mr. DesRoches: Nobody can force him under the present act to do that. Under this new act he will not be forced either. It will be purely voluntary. We have made studies of people who draw welfare, and there will always be people who have larger families than we can cope with under this form of plan. Our figures indicate that possibly 7 per cent of claimants—which is not a very high percentage—have to fall back on welfare to supplement their benefits either because their previous earnings were too low or because they have larger families and have to have additional assistance. With the benefits at 66½ per cent we fully anticipate that the proportion of people who will have to fall back on welfare to supplement the benefits will be fairly low.

The Acting Chairman: You know, the provinces always claim that the welfare recipient has to pay the amount back but that it is not the province's fault. They say it is the fault of Ottawa, who insists that the province collect the money. Did I understand you to say, Mr. DesRoches, that it is not compulsory?

Senator Flynn: They have to collect what? Welfare or unemployment benefits?

The Acting Chairman: Welfare.

Senator Hays: Mr. DesRoches said it was not necessary.

Mr. DesRoches: In fact, the present act forbids anybody assigning that amount of money. Under this act the individual could make a voluntary assignment. That is the only change.

Senator Connolly (Ottawa West): And only to provincial authorities.

Mr. DesRoches: To a government authority, but not to a private individual such as a loan company. It has to be a government agency.

Senator Connolly (Ottawa West): But it has to be a provincial agency, does it not?

Mr. DesRoches: It could be municipal or provincial.

Senator Hays: It would be a pretty vicious circle. They are unemployed and then there are more children.

The Acting Chairman: Perhaps I did not make myself clear. The welfare that the province pays out is paid out under the Canada Assistance Plan, of which the federal Government pays 50 per cent. Conditional on that 50 per cent is the fact that if you pay out welfare to a person who is entitled to unemployment insurance, then what is paid out must be collected back. There seems to be a clash between the Canada Assistance Plan and the unemployment insurance plan. Is that clash still there?

Mr. DesRoches: Welfare is based on need, Mr. Chairman. Therefore, you will always have this clash in the sense that so long as you have a program that is based on need then the welfare administrators, be they provincial or municipal, must take into account the income which the man gets from us in determining his need. That is the only answer I can give. In other words, they say if you need \$200 then that is what you get. If you get \$50 from unemployment insurance, then your need from the welfare is only \$150.

Senator Connolly (Ottawa West): Mr. DesRoches, suppose a man with a large family is receiving \$100 a week, or the 66⅔ per cent. The \$100 a week will not meet his requirements. Can he continue to draw his unemployment insurance under the provisions of this new act and supplement that income in case of need by welfare payments?

Mr. DesRoches: Oh, indeed. That will continue. The problem that Senator Carter envisages is the reverse of that, I think. Senator Carter was raising the problem that welfare agencies will not pay the full amount.

Senator Connolly (Ottawa West): I realize that, but it seems to me that the full amount would be payable under this act. That is to say, the \$100 a week would be payable, and the amount that would be paid under the Canada Assistance Plan would supplement the benefits under this act to the extent that the administrators of the Canada Assistance Plan considered the recipient to be in need.

Mr. DesRoches: That is correct. That is the way it is paid. There are such supplementaries in industry, I might point out. They are called Supplementary Unemployment Benefits or SUB's. Where they have a formal agreement and a separate fund, industry can also supplement unemployment insurance benefits, if in collective agreements they want to arrange this. So it is the same thing in a way as Senator Connolly (Ottawa West) has explained.

The Acting Chairman: The problem, Senator Connolly, arises when a person has a big family and has to wait for his unemployment insurance. He probably has to wait three or four weeks. The welfare payments, for the sake of argument, are \$70 or \$75 a week. But the unemployment insurance is probably only \$60 a week, and yet he has to pay out of that \$60 a week a refund of the \$75 per week he got from welfare. This is what has happened, and the welfare people says, "Well, of course this is not our fault. The money that you got was paid under the Canada Assistance Plan and the terms of that plan state that we must collect it back if you were entitled to unemployment insurance," and so they get into a bind.

Mr. DesRoches: I should imagine this would only occur if the total amount exceeds what they have determined to be the needs of the family.

Senator Flynn: But the maximum welfare payment will be given, and then they will recover from the unemployment insurance or through the unemployed person the amount payable under this present act. Is that not so?

The Acting Chairman: That is what they have been doing.

Senator Flynn: This system could possibly suggest to the person in need not to apply for unemployment insurance benefits but just to get welfare.

The Acting Chairman: That is so, and it is true in a number of cases that have come to my attention. Unfortunately there is a stigma attached to welfare.

Senator Flynn: There is another stigma attached to the benefit now in that it is taxable whereas the welfare payment may not be.

Mr. DesRoches: I would like to see a specific case, particularly in the waiting period where a man has no unemployment insurance. Let us suppose that a man leaves his job and he has no payment at all—and these are not unusual circumstances—and then there is a waiting period, I would think that if Welfare deems that he needs money during his waiting period, then that money that is paid is not recoverable. But if they go back and take it away, I would think that somebody is exceeding his authority.

The Acting Chairman: You see, there is an overlapping. Supposing a person starts on January 1 and is entitled to unemployment insurance benefit as from that date and let us say he is getting welfare from January 1st to the middle of February. Then eventually he gets unemployment insurance benefits back to the 1st of January also so the two payments overlap. Then when he gets that, he has to pay back the welfare payments he has already received.

Mr. DesRoches: I would think in that case that that would be fair, up to the amount of the benefit he has received. Because the welfare would supplement that if need be. But he has received his income from Welfare and I think the welfare agency in that case is entitled to seek repayment. The problem I can see is that this creates a situation where people have to pay back money they have already spent, and this creates a difficulty.

Senator Fergusson: Is there any consultation between the Department of Health and Welfare and other departments concerning these problems?

Mr. DesRoches: Yes. Actually the administration of social assistance is a provincial matter. Even though the Canada Assistance Act sets the broad parameters and there is consultation required at that level, the real consultation is required at the municipal and provincial level where administration takes place. We do have close consultation at those levels. Our managers contact the municipalities and contact the provinces so that they at least know which people are on both systems. As I stated in giving these statistics earlier, there is less overlap than would appear on the surface. It is probably 5 or 6 per cent. Nevertheless there is fairly close liaison between the two groups. Therefore the Welfare people can direct unemployed people to draw unemployment insurance or we can direct people to Welfare if that is the solution to their problems.

Senator Fergusson: I was a welfare official in Ottawa for a number of years in consultation with field workers, and in general conversation of which I have no notes I certainly would have taken it that there was not that close consultation even on that level. Because they felt that if there was some understanding between the people representing the different departments, they could do a much better job and also provide better service to the people who needed it.

Mr. DesRoches: The field people of Health and Welfare in this area—and I do not want to get into an area where I do not know all the answers—are mainly people concerned with the overall administration and funding of the Canada Assistance Plan. As I said before, the real key to dealing with welfare and social assistance are the people who administer it. These are the provinces and the municipalities. There may be lack of rapport in certain areas but certainly I know effort is made.

We had, for example, last fall a special day, which I called "Welfare Day"—but we tried to play it on a low key without any publicity—when all managers were instructed to invite all the welfare agencies in the area to have discussions with them. Again, since the bill was before Parliament we have had sessions in 10 or 15 of the major cities with fairly large groups of welfare administrators and private associations in order to launch this client assistance where there would be this communication.

As far as individuals are concerned, there is a constant exchange of lists between the two agencies. We do make available the lists of names of people so that we will know who is getting paid for what. If there are cases of people getting two payments, it is as much in the interests of ourselves as in the interests of the welfare agencies to know about this. People who fall in between the two create a situation that should not exist because of the liaison we have. I think that there are cases of people who get the two payments now, and the complaints we have been hearing in the last two years have been more from the welfare agencies and from the municipalities who have said, "We are paying for people who really are entitled to unemployment insurance benefits, but your payments are late, and if your payments were not late, we would not have to make these payments."

Senator Fergusson: But then in other instances when they contacted the Unemployment Insurance office, they were not able to find out for such a long time whether people were going to be paid. They felt there was a great lag.

Mr. DesRoches: That can occur, but again I can only say this is in the low percentage. There were a number of instances over the last two winters where employers did not make the records available. Without records of contributions we are helpless. Under the present act a person is not entitled to benefit unless the contribution week has been paid. We must therefore have evidence that the contribution has been paid.

Under the bill, we will not require that rigid link between the contribution and the benefit. These are the subtle things that perhaps do not appear on the surface,

but from the point of view of administration we will require a record of earnings, which is different from proving that a person has paid contributions.

There are cases, for example, of an employer going bankrupt and disappearing. If we do not have evidence that a person has paid contributions, there are no contributions available. It is a lengthy process to get secondary evidence or affidavits to say that a person has in fact worked and paid contributions. Such cases usually end up in a welfare situation.

Senator Hays: Do you not think there is much more criticism on the other side, namely, the abuses. It seems to me that you have to do a pretty good job. Your job concerns insurance. The other job is the concern of the welfare people. What we are complaining about this morning is that you are not taking care of your portion of this matter.

Mr. DesRoches: I think we have to do both.

Senator Hays: Those of us who have a substantial number of people working for us would like to see tougher laws regarding unemployment insurance. We would like to see those people receive unemployment insurance who deserve it. On the other hand there are a lot of abuses. No doubt this bill will not encourage more abuses. I was not given to understand that from your remarks.

Mr. DesRoches: I think we have to do both. Let us agree that the two jobs are required. This specific feature has a double edge to it, that we work with the welfare agency so that not too many people get double payments they are not entitled to, and, if they are, they should have to pay it back.

There will be cases where we will have to make sure that people get their payments. There are cases of people who go to both agencies. We have received complaints from municipalities in that direction. We have to listen to that side of the problem. It is the same in other areas of the act. While it is true that the eligibility requirements have been lowered, it does not mean that we will relax our administration.

We are trying to find new ways. Over the last few years we have developed new ways of inquiring and finding out what people are doing. Some are rather simple things like delivering the cheque, finding out if there is a person living there, and what that person is doing. We have to do a mixture of that type of investigation. In the last few years we have done a lot in terms of sampling a number of cases according to characteristics. If a person of a certain age group has been on unemployment insurance for a certain length of time, it raises the question as to why. You tend to select certain groups and follow through either by telephone calls or interviews to find out what the problem is.

Senator Hays: What are you doing about people who are getting ready for retirement and who draw unemployment insurance premiums at the end of retirement up to the maximum amount? They say "I paid it in and I want to get it back."

Mr. DesRoches: My standard answer is—and I have given this answer in evidence a number of times—that these people are not truly entitled to it unless they meet the conditions of the law. The difficulty is that it is perhaps more difficult to determine whether or not they are meeting the conditions of the law. We have provided, this retirement benefit feature for people who will draw the Canada Pension Plan or the Quebec Pension Plan. However, they will cease drawing benefits after this three-week “retirement” benefit. This was provided as a means of closing off for those who take this option. The Government did not feel that we should go beyond that and have an arbitrary cut-off, because the Canada Pension Plan and the Quebec Pension Plan have not reached maturity.

I do not have the exact figures, but for a person earning \$100 a week, the benefits are somewhere around \$100 a month. It will take another three or four years before it reaches the maximum of \$200. It may be that in three or four years time the Government may decide that perhaps an age cut-off rather than a pension cut-off might be reasonable.

Since the two pension plans have not reached maturity, it was felt that it would be a more reasonable indication of a person's retirement at this stage, to use the pension plans as an indication of retirement rather than an arbitrary age.

On the other hand, the most recent statistics I have seen from the labour force survey—these were for some few months ago—indicate that some 37 per cent of men between 65 and 70 are still in the labour force. We sometimes assume that everybody retires at 65 and goes on unemployment insurance, when in point of fact a fair number of people continue to work. Therefore we could not close it off arbitrarily and say these people will no longer be working or requiring unemployment insurance.

For these reasons we will be left somewhat with the same problem as before, of having to make a decision as to whether a person is truly looking for work or has retired. We have however, one means determining whether he has retired, which is the pension feature. Beyond that we will have to make a decision as in the past and say, “What type of work are you looking for? Is this or is this not a reasonable decision?”

A further feature is the fact that many people in that category have to retire because of sickness. They will, of course, be covered under the sickness feature for 15 weeks. There will be ways of making things more legitimate than they were before for that group of people, either through the pension plan or through this pension feature.

Senator Hays: How does this unemployment insurance plan compare with that of some of the other countries such as the United States?

Mr. DesRoches: Under the new bill it will be very far ahead of the American plan.

Senator Hays: What countries would be ahead of ours?

Senator Connolly (Ottawa West): What do you mean by “ahead”?

Senator Hays: Well, for the benefit of those who are unemployed.

Mr. DesRoches: It is difficult to compare this with some of the European countries. The United States has 50 systems. Each state has its own system. As far as I know, effective coverage in the United States is now somewhere down to 33½ per cent of unemployed days.

Senator Hays: Thirty-three and one-third per cent of the workers are covered?

Mr. DesRoches: Of unemployed days. That is because there have been all kinds of features and interpretations put into various bills which reduce the effectiveness in each state. The coverage is not high in some states or else the benefits are low.

Senator Hays: This is not a national plan?

Mr. DesRoches: No, there is a national overlay and then there are 50 different plans operating under this overlay, which is a taxation overlay if you like. Each state operates its own system with its own commission, and the revenues all come from the employers. The employers have had a very strict right of appeal, which again has cut down the number of claims. I do not want to say anything derogatory about the American system; it meets their needs, but the coverage effectiveness is very much lower and the rate of benefit is not as high as 66½ per cent. There was a bill last year to improve the situation, but this was at the federal level, and it leaves a while to permeate the 50 state systems. I would say our system has a much wider coverage and higher benefits, and our eligibility conditions, of course, are better than in most of the states of the union.

Senator Hays: What percentage of our workers in Canada now are covered?

Mr. DesRoches: It is about 80 per cent now, and this bill will bring it up to about 96 per cent.

Senator Hays: 96 per cent of all workers will now be covered?

Mr. DesRoches: Yes. The main exclusions now will be self-employed, and that will include farmers.

Senator Hays: How are you going to cover farmers?

Mr. DesRoches: We do not intend that.

Senator Hays: There is no way.

Mr. DesRoches: This is the kind of thing that would have to be thought through. It is certainly not the kind of thing we were ready to recommend at this stage.

Senator Fergusson: I think you told us that 37 per cent of men over 65 are still working. Do you have any statistics about women?

Mr. DesRoches: It is much lower. This is between 65 and 70 years of age. I think in most business women retire earlier. I know the figure is much lower. I think women are seldom used as an example of people who abuse the plan on retirement. As a rule women retire much earlier.

Senator Flynn: Of their own decision?

Mr. DesRoches: Of their own decision.

Senator Fergusson: Not always of their own decision.

Senator Flynn: I would say generally speaking. I was afraid Senator Fergusson was trying to make a case.

Senator Kinnear: Earlier I wanted to ask a supplementary question to something you said, Mr. Chairman, when you said there was such a lag in getting a return for the unemployment insurance. I was wondering if employers will co-operate with a separation statement with regard to contributions and length of service. Could they not do that as the separation occurs, just give a statement?

Mr. DesRoches: This is the way we are planning to do it. Under the present system it is a mixed affair, because we are dealing with two years, we are dealing with 104 weeks. Right back from the time the act started there had to be a way of either putting the burden on the employer of maintaining those records or accumulating these records. The choice was made that it would be preferable, because people change jobs within two years, to accumulate these records.

Senator Kinnear: Do you anticipate correcting the lags there?

Mr. DesRoches: Yes, because we will not need to accumulate these records. We are dealing with a 52-week period, which is half. Not only that, but under the present act you can go back four years. There was an absolute need to maintain records at five central points. Under this bill you can only go 52 weeks, and we are putting most of the onus, if you like, on the employer to produce that record at the time of separation. Of course, the employee will be directly interested, because he will need that piece of paper. Now he needs it in most cases; where a person has a very short employment record he needs that, plus our record. This is where the problem arises of marrying these two records. We hope this will be greatly lessened by having only one source of information.

Senator Hays: The employee does a fairly good job of getting all the papers today that he requires when he decides to go on unemployment insurance. He gives you notice that you can get another man to take his place. He picks all this stuff up. If he is a real gentleman he gives you two weeks' notice.

Mr. DesRoches: I agree that people know their own self-interest.

Senator Smith: I am not entirely clear what the bill does in connection with the retirement benefits. I think I was confused more by some comments which the witness made, saying that the government did not feel certain things were necessary because the Canada Pension Plan would not mature in another three or four more years and so on and so forth. I am not a lawyer, but when I first heard the bill it seemed so definite that when a man attains the age of 70 or a retirement pension at any time becomes payable to him, then the thing takes effect. Would you clear it up? I am a little confused.

Mr. DesRoches: I am sorry. Could I explain it this way. We will talk just about the Canada Pension Plan. The CPP has two dates. The first date is 65, where it is optional to take CPP and 70, where it is mandatory. Therefore, the choice was to find some way of determining that a person has really retired from the work force. Perhaps I did not make it clear, but I was saying that once choice would have been to take age as an indication that a person has retired. The Government preferred to take the attachment or participation in the Canada Pension Plan as an indication that a person had in fact retired and was no longer seeking work. Therefore, at 70, since it is mandatory, it is an absolute bar to benefits. At 65 it is optional. That is what the bill says. If a person does take the CPP at 65, 66 and so on, he will be deemed to have retired.

Senator Smith: Then he can only draw for a three-week period?

Mr. Desroches: For three weeks, that is correct.

The Acting Chairman: I am afraid we interrupted you. Had you completed your presentation on the benefits section?

Mr. DesRoches: The only other points on benefits are maternity and sickness. We have covered the retirement. There are benefits provided now for maternity. For a woman who has a child, there will be a period of nine weeks before confinement and six weeks after. This is a major change, since under the present act capability is an absolute requirement. For years the decisions of the commission have been that a pregnant woman is incapable of work six weeks before and six weeks after confinement, and therefore is barred from benefit. This will be a complete reversal of the position, whereby capability will be waived during the period nine weeks before and six weeks after.

With sickness, there will be a period of 15 weeks of benefits provided for people who have an interruption of earnings because of sickness. There will be a two-week waiting period, as in other benefits, and then there will be an entitlement to 15 weeks, which again can be drawn within a period of 29 weeks, the same as the other 15 weeks of regular benefits. These are two features which I recall speaking to the Special Senate Committee on Poverty about when I was here, in 1968. They have been incorporated in the bill; they are new features.

Senator Flynn: We are doing away with some discrimination here.

Senator Connolly (Ottawa West): Mr. DesRoches, it was suggested in the Senate by a distinguished gentleman that maternity benefits would give a woman about one month of holiday. I rather disputed that, but I did not want to deal with it. I said I would turn him over to the tender mercy of the lady senators. Have you anything to say about that?

Mr. DesRoches: One could look at it as recognizing a fact of life. Whether or not it is a holiday is not for me to judge. I suppose really there are two facts of life involved. One is that it is a real impossibility for a

woman to work in many occupations, if she is pregnant, and the other is that there is a higher proportion of women working now than before. You can add to that the fact that our present administration is rather archaic, since not only does it ignore the first fact but it penalizes women at that stage and forces them to use other routes to try to qualify for benefits.

Senator Connolly (Ottawa West): That is a pretty good explanation, but I think the ladies could do better than that.

Senator Flynn: It has been explained by Senator Connolly (Ottawa West) to my satisfaction.

Senator Connolly (Ottawa West): I am not by any means an expert.

The Acting Chairman: Mr. DesRoches, I am curious as to how you have managed to change your philosophy on sickness. When I had the honour of representing my constituents in the other place, it was my experience that if a person was already qualified for unemployment insurance and was receiving it then became ill he continued to receive unemployment insurance, although he was not strictly available for work. However, if he had to leave his job because he became ill on the job, then he could not qualify. The argument I used to get from the unemployment insurance people was that it was unemployment insurance, not sickness insurance. Now you seem to have found some way of blending the two together.

Mr. DesRoches: I was not there at that time, but I think it can be explained this way. Unemployment can start as a very simple concept, namely, that a person loses his job. At first we say that, if a person severs his relationship with his employer, that is unemployment. But we know from experience that life is much more complicated than that. People have holidays during which they are not working. They have periods during which they are laid off temporarily and, thus, are not employed. There are periods of time when people are sick and are not receiving earnings. Taking all these things into account, we have over the years come up with the concept of unemployment as an interruption of earnings. This has been applied in the act. About one-third of the benefits that are paid now under unemployment insurance are really a replacement of earnings.

If you were to impose the condition that people must have severed their relationships with their employers in order to receive unemployment insurance, then presumably everybody would be fired or otherwise separated from his employer and this would lead to a bad social trend, I would assume. Therefore, the interpretation which has been applied, which depends upon conditions of work that have been changing a great deal, has been a concept of an interruption of earnings.

If you follow the definitions of the present act through to their logical consequence, "unemployment" could be defined as a situation in which a person does not work, and "no work" could be defined as a situation in which a person has no earnings.

Now, bearing in mind that people do lose their jobs because of sickness, it seemed to us that the arbitrary distinction between a person who is out of work because of illness but is not considered unemployed and a person who is out of work for some other reason and is considered unemployed was not a proper distinction. That situation had to be corrected one way or another and we worked on this and had interpretations from the Department of Justice which confirmed that an interruption of earnings was what the act was intended to protect. Therefore, unemployment insurance was a valid application in this area.

I must point out here that the bill does provide that any province which wishes to bring in a sickness insurance plan for its population may do so by virtue of provisions contained in this bill. Those provisions will permit us to cease paying benefits and drawing contributions in order to avoid any overlap. Similarly, there is recognition of the fact that there could be premiums on maternity and so on, and it could be that a province might opt to develop its own plan, in which case any overlap that would occur could be avoided by the provisions in this bill. We go that far.

We have a legal opinion that we are in a correct constitutional posture, but that, if a province should bring in a plan which covers its entire population, then there are ways of avoiding duplication.

Senator Flynn: Mr. Chairman, I wonder if it would be appropriate at this stage to come to the problem of the costs of these changes. Some figures have been given, but my understanding is that the rates and the benefits have been adjusted on the basis of the maximum of 4 per cent unemployment, generally speaking.

Mr. DesRoches: The rates for the employers and employees will be set on the basis of experience, up to 4 per cent. Beyond that point the Government will pay. In fact, the Government pays some costs before 4 per cent, and beyond 4 per cent all the costs will be paid out of the general revenue.

Senator Flynn: If the rate of unemployment does not go beyond 4 per cent, will the system be self-supporting financially?

Mr. DesRoches: It would be self-supporting at the 4 per cent level with a very small contribution from the general revenue at that level.

Senator Flynn: Would there be a contribution at that level?

Mr. DesRoches: Yes, because, as I tried to explain very briefly earlier, some of the benefits are paid to meet certain conditions and therefore it is not strictly a 4 per cent line. There are some benefits that are paid by the Government. Perhaps Mr. Steele could address himself to that point.

Mr. David J. Steele, Director General, Planning, Finance and Administration, Unemployment Insurance Commission: The Government pays the full costs of all benefits in the extended benefit period. That includes the

ones on page 106, Table 2, mentioned to you earlier, and which are not dependent upon the unemployment rate. So those particular benefits will always be paid for by the Government. On top of that, even though the unemployment rate will be below 4 per cent, there will always be regions where the extended benefit will be payable. Even though the rate came down to 3.6 per cent in 1966, about half of the 16 regions would have been up around 5 per cent, 6 per cent or 7 per cent. Therefore the extended benefits would have been payable, and that would have been picked up by the Government.

Senator Flynn: Have you any figures that you could adjust to last year's situation for instance? What would represent the contribution of the Government?

Mr. Steele: We have had them projected for 1972.

Senator Flynn: On the basis of last year.

Mr. DesRoches: In this document, which was made available last fall and is called *Facts and Figures—Unemployment Insurance in the 70's*, there are various tables provided, and one of the tables here on page 2 gives the estimated contributions at different rates of unemployment. At 4 per cent unemployment the Government would pay \$50 million, and even at 3.5 per cent unemployment the Government would pay \$30 million. That covers the situations that Mr. Steele explained.

Senator Connolly (Ottawa West): I must say, Mr. Chairman, at this point, that I did not tell the Senate that last night, because I did not know about it. I thought the cut-off point was 4 per cent.

Mr. DesRoches: As Mr. Steele explained, there are these two situations where there is a commitment on the part of the Government to pay the regional benefits. In other words, the payment by the Government is structured around the type of benefit and of course two of them happen to fall on the other side of the 4 per cent rate.

Senator Flynn: The Government is making these contributions under the legislation presently in force?

Mr. DesRoches: Under the present legislation we have an entirely different method of financing. There is a strict formula which can be called a 5-5-2 Formula. The employer and the employees pay half and the Government pays 20 per cent of that, and that adds up to 1/6, plus all the administrative costs. But under the proposed plan the administrative costs would be absorbed by the employers and the employees and up to 4 per cent, except for this adjustment in types of benefits, the generality is that the plan would be self-financing. But of course there are these exceptions because there are higher rates in certain areas where the Government would have to step in.

Senator Flynn: But in a good year it would be less costly to the Government than it is at present?

Mr. DesRoches: In a very good year, yes, less than 4 per cent nationally.

Senator Flynn: It would go back to the period of 1945 to 1950 or even to 1955.

Mr. DesRoches: Yes, we would have to go back that far. I guess the lowest figure recently was 4.7 per cent in 1969. The 3.6 per cent in 1966 would have been the type of year when the Government contributions would have been much less. But the Government contribution is very, very steep when the rate of unemployment goes up. The other side of the coin is that instead of relying on a fund which cannot really be predicted, the Government has a very large cost factor when you go from 4 to 5 or 6 per cent.

Senator Flynn: Would you risk giving us a figure there?

Mr. DesRoches: I think Mr. Steele is more up to date on this than I am. Perhaps he can interpret the figures better than I can.

Mr. Steele: Quoting now from *Facts and Figures—Unemployment Insurance in the 70's*, at page 2, which is the estimated contributions in 1972 at various unemployment rates. Because it is a pay-as-you-go plan, the contributions estimated for 1972 are also the estimated costs for 1972, so they are exactly equal. The Government's contribution at 6 per cent unemployment rate will be around \$300 million and at 7 per cent it will be around \$430 million. That, of course, is for the whole year. We had 8 per cent, for example, this February but the average for this year which is a bad year is only going to be 6 per cent.

Senator Flynn: And then the amount is \$300 million.

Mr. Steele: That would be the cost to the Government in a 6 per cent year.

Senator Flynn: That is without taking into account the incentives under other schemes such as the Regional Development programs and subventions to industry for creating new jobs.

Mr. DesRoches: Strictly for this plan, yes.

Mr. Steele: If there are incentives, of course, the unemployment rate should come down. But as far as we are concerned, whatever the unemployment rate actually is, that is what the Government has to pay.

Mr. DesRoches: I suppose the comparable figure under the present plan would be, without the 10 per cent increase, about \$190 million, so that you can see it will be much higher at a 6 per cent unemployment rate. At that rate it would be about \$300 million as opposed to about \$190 million under the present system.

The Acting Chairman: For the same average rate of unemployment?

Mr. DesRoches: Yes.

Senator Flynn: An increase of about \$120 million?

Mr. DesRoches: Well, \$300 million is the figure that Mr. Steele has quoted, and it is \$190 million under the present system.

The Acting Chairman: What is the maximum payment for the Government shown in your table?

Mr. DesRoches: That is 7 per cent.

The Acting Chairman: You do not go beyond 7 per cent?

Mr. DesRoches: No.

Senator Flynn: But you have given a figure on the basis of 6 per cent unemployment. Now if we were to go down to what is generally accepted as a normal rate, say, 4 per cent, would the contributions of the Government be much less?

Mr. DesRoches: It would be \$50 million in that case.

Senator Connolly (Ottawa West): What you are saying amounts pretty well to this, that if you have the optimum situation in the labour force, and I suggest that the optimum here is 4 per cent, it will still cost \$50 million a year.

Mr. Steele: Perhaps I could add one thing to what I have said. If we average 4.8 per cent unemployment for the decade, the Government will pay approximately the same as it would have done under the present act. This means that towards the end of the seventies we should be coming down to about 4 per cent or 3.5 per cent unemployment, and in that situation the Government will pay exactly the same over the 10-year period as it would have paid under the present act.

Senator Flynn: Under the present act it pays 20 per cent plus the cost of administration?

Mr. Steele: Yes.

Mr. DesRoches: Twenty per cent of the revenue collected.

Senator Connolly (Ottawa West): Twenty per cent of the contributions of employers and employees plus administration.

The Acting Chairman: That brings up another point. Mr. Steele, you gave two figures, one of \$190 million under the old plan as compared with \$300 million under the new plan at the same rate of unemployment.

Mr. Steele: The \$190 million that Mr. DesRoches mentioned is paid by the Government in terms of administration costs and contributions to the fund.

The Acting Chairman: That includes administration?

Mr. Steele: Yes, without regard to the unemployment rate. They pay a fixed \$190 million this year. That does not include the 10 per cent supplement, which has cost another \$54 million this year, because the rates are not satisfactory. Regardless of the unemployment rate, they would pay that amount, whereas under the new scheme they pay whatever the unemployment rate calls for, which might be down to \$30 million to \$50 million, which is virtually nothing, or up to \$300 million in a bad year.

Senator Connolly (Ottawa West): Forty million is not virtually nothing. Compared to current costs it is a good deal less.

Senator Smith: I wonder if the witness would make a short statement on seasonal workers' benefits. I was quite surprised when Senator Connolly, on second reading, mentioned that the total seasonal benefits in the last year amounted to \$225 million. That is a lot of money. Over the years I have heard it said that fishermen are the ones who peel the money off the fund and pay nothing into it. Nobody mentions the other seasonal workers in this country. Is there any breakdown as to what extent fishermen are responsible for their share of the total benefit figure of \$225 million? Are there figures for the forest industry or the Great Lakes seamen, or for any other classifications that you might have?

Mr. DesRoches: I do not think I have the figures to match exactly what you are asking. However, I would explain it this way, that the reason for the change affecting self-employed fishermen comes about for two reasons. Firstly, because these people are self-employed and are paid benefits on the basis of a catch that is sold. There are some implications to this which at times are not very favourable to fishermen. If they do not have a catch or they lose their catch, they do not have contributions and therefore do not receive benefits.

That is part of the rationale behind the adjustment that may be required in fishing. The ratio of contributions to benefits to the fishing industry is a factor of one to 10. In other words, there are 10 or 11 times as much benefits paid out as there are contributions brought in. Mr. Steele assures me that it could be as high as 14 to one.

I do not have the exact figures, but it is somewhere in the area of \$170 million or \$180 million that has been paid to fishermen since the scheme started, as against a contribution of perhaps, \$10 million, \$11 million or \$12 million. I do not have the exact figures, but the ratio of 14 to one would be relatively accurate.

No other industries have such a high ratio of output to input. There is no doubt that for self-employed fishermen it is not a sound financing arrangement.

Perhaps we should explain also that the present act makes the Government responsible for fishing apart from the scheme. Under the bill, whether or not there is a change in the fishing arrangement, the Government will take charge of paying for fishing out of general revenue. That change will eliminate the problem of who pays for fishing. The government will pay for it from now on.

Senator Connolly (Ottawa West): Is that included in the \$30 million?

Mr. DesRoches: Yes, the \$14 million would be in that \$30 million. That is a direct charge on the Government as of now. With regard to other industries, there is the question of experience rating. Using construction as an example—and again quoting from Facts and Figures, page 10—in 1968 we had a deficit in the construction industries of \$43 million. In other words, there was \$76 million paid in benefits as against contributions of \$33 million. Therefore fishing is not the only deficit industry, but it is the largest deficit.

The bill incorporates the idea of experience rating whereby a rather mild form of adjustment can be made

to adjust contributions more in line with benefits—not in the sense that there would be a complete adjustment to the firm or to the industry, but in the sense that there would be an adjustment so that the deficit of \$43 million for construction would not fall on all the other industries. but that construction would bear a larger burden of that \$43 million, and conversely the manufacturing industry would benefit from the fact that it has better experience.

All this scheme of experience has been made conditional by statements that the minister has made on consultation with the industry through the advisory committee, and the gradual period of phasing in. All of this is based on the experience which we would accumulate between now and 1973. The principle of experience rating would permit making these adjustments based on accumulated experience and discussions with representatives from industry. The principle is here. The mechanics will be worked out in future.

Senator Smith: From what the witness has said, I take it that as far as the ratio of benefits to payments is concerned, the seasonal self-employed fishermen segment is 10 to one. In terms of the proportion of that \$225 million which it cost last year, it is very small. This scheme has been going on for roughly 20 years. The amount mentioned, divided by 20, is a very small amount of money. I am wondering whether any new scheme will produce the same social benefit that this has produced for fishermen.

Everybody runs down the scheme as though it is a horrible thing. I think it has been a most worthwhile scheme in most parts of the country. One of the provinces where it does the most good is in Senator Carter's area. In my own particular area, when we do not have freeze-ups, it can be criticized with good reason. Fishermen intentionally do not wish to go on the larger draggers. On the north shore of New Brunswick it saves them from being deprived of a great many necessities of life. I have been informed that it saves merchants from going under, it keeps the children supplied with food, it pays the grocery bills.

I hope that someone from your commission will be on any study group carrying on discussions leading to what we hope will at least be equivalent to what we have in terms of social benefits. It is not all bad. It has corrected a great deal of social hardship.

Mr. DesRoches: The White Paper does not in any way condemn the system. I think the statement I made earlier was that if it is to be condemned it is because it really does not cover the situation adequately.

I think the flaws that have been in the system from the financing point of view are beside the point. This is why the Government is willing to pick up the tab, to get this financial argument out of way. The financial argument was made by the Gill Committee and by a number of other people. I admit it is perhaps difficult to administer this area because it creates a legal figment. I think this is the criticism we have had, that it creates a legal figment of making a sale equivalent to employment, and it does not cover the situation where the sale does not occur because of mercury pollution, or a catch lost a sea, or these other situations that are not covered, and a sale

does not take place. I think it is on those grounds that a new scheme would have to be developed. The policy of the Government embodies in the White Paper is that nothing would be done, and that the benefits would be continued as they are now until such a scheme is developed.

Senator Flynn: In the meantime it has to be recalled that if there is any abuse, since the benefits are taxable that would be a correction. Seasonal workers who have a very profitable season and collect unemployment benefit will have to pay income tax on that. There is a sort of recovery anyway.

The Acting Chairman: Will the Unemployment Insurance Fund go out of existence and be incorporated in a consolidated fund, or will it still have a separate existence?

Mr. DesRoches: It will have a separate existence under the term "Unemployment Insurance Account". The fund is now part of the Consolidated Revenue Fund, and the Unemployment Insurance Account will also be part of the Consolidated Revenue Fund. This is more an accounting device for locating it in order that money can flow in and out. The main difference will be that it will not be an accumulated fund. In other words, where an excess of contributions is raised in anticipation of an excess of benefits later on, this feature will not be there. There will be an account, the money which is now in the fund will be poured into this account, and then revenues and expenditures will be made out of this account, but on a pay-as-you-go basis. The main difference is not so much in the disappearance of the accounting method as in the disappearance of an excess of contributions, if you like, in anticipation of an excess of benefit later on.

The Acting Chairman: Will these new revenues that are collected when this bill becomes law go into the Unemployment Insurance Fund?

Mr. DesRoches: Yes.

The Acting Chairman: Or into the Consolidated Revenue Fund?

Mr. DesRoches: They will go into the Unemployment Insurance Account, which is part of the Consolidated Revenue Fund. The present fund is part of the CRF, it is purely an accounting device.

Senator Connolly (Ottawa West): I understand there is about \$350 million in the fund now. Would you tell the members of the committee what will happen to that balance?

Mr. DesRoches: The balance is slightly lower than that.

Senator Connolly (Ottawa West): It may be.

Mr. DesRoches: It is somewhere around \$244 million at the moment. It will be transferred to the Unemployment Insurance Account, which is a new term, which has not got this funding idea, so it is a separate account. As the fund is a separate account the money will continue, if there is excess, to be invested by the Department of Finance with the Bank of Canada at a rate of interest

which is as current as possible. It is based on an average, I think, of the last three months rate of treasury bills; a fairly current rate of interest is used. It is possible we might even get different rates of interest under this bill, depending on the financial arrangement.

If there is an excess of revenue over expenditure this will be invested as an advance. If there is a deficit of revenue, as might occur at certain times of the year, there are provisions for the Government to put as much as \$800 million into this account to cover the amount of money that the Government may have to pay back a year after, once the experience of the year is known. There are these two provisions. It is a separate account; it will have the same investment features, and if there is a deficit the Government is committed to paying as much as \$800 million, which should be ample to meet the amount of one year to be paid by the treasury in the following year.

Senator Connolly (Ottawa West): I had understood, though, that the balance remaining in the fund was to be used for the assistance of the new entrants to the scheme, the additional people who are now coming into the labour force and stand to benefit after eight weeks of attachment in three-week instalments.

Mr. DesRoches: I think effectively that would be so in the sense that this money has been contributed by people who are now in the fund, if you like, and they will be starting to get benefits before new contributions are raised. Although there is a change in contribution this July, it is to cover that portion of people who are getting between \$100 and \$150. The other people will be immediately entitled, very soon after, to the new rate of benefits, even though the new contribution structure will not come in until next January.

Effectively, what you are referring to is how we make it attractive for new people who have suggested that their experience is lower than most people's. They are public servants, and so on. The intention was to give them a preferred rate over a three-year period. To the extent that their experience would be lower, this would be fine. If their experience turns out to be the same as other people's, there would be a deficit created from that and the fund would be used to that extent as a means of covering this feature to those people who were now claiming they have a lower experience. We do not really know the actual experience; I do not think anybody knows; it is a changing situation. Assuming their experience is lower, presumably this preferred rate would meet that experience; but if the experience is higher, then there would be a deficit created for that reason.

Senator Connolly (Ottawa West): I should like to ask one more question, Mr. Chairman, because I think perhaps we are getting towards the end of our considerations. The telegram to which you referred at the beginning of this sitting mentions:

—an annual deficit of from four hundred million dollars to one thousand million dollars estimate by responsible citizens—

I think perhaps Mr. DesRoches has already dealt with that, but specifically it might be helpful if he said something about it.

Mr. DesRoches: There are two things here. If it is meant to be a deficit on government account, at a high rate of unemployment the whole scheme is structured so that it will be in deficit, and will require funds from the government. This has been explained. At six per cent it would require \$300 million on the part of the government, and at seven per cent \$400 million. If that is what is meant, I do not know where the \$1,000 million comes from. This would have to be a very high rate of unemployment. On the other hand, if what is meant is that our figures are out by \$400 million, I can only try to explain how we have made our estimates and hope to leave some credibility behind.

First of all, even though the sickness and maternity is only one feature of the plan, perhaps I can deal with that separately, because it is a new feature. We cover now only people who are sick after they have become unemployed and there is no doubt that we will have more claims, because of the sickness and maternity feature, then we have had at present.

What we have done in that case is this. We have done this for the whole program. We have secured the services of actuaries both inside and outside the Government. We have had attached to our organization now for about two years, an actuary from the Department of Insurance. He is working with us on the estimates and other matters relating to the sickness and maternity portion.

In addition, we have retained the services of outside actuarial consultants for that very same purpose of verifying our estimates and we have obtained a certificate of validity of our estimates in this area.

Senator Connolly (Ottawa West): Would you care to name the consultants?

Mr. DesRoches: It is William Mercer Limited. We have a certificate for sickness and maternity, which is one of the special items.

As far as the other elements of the program are concerned, where we have direct experience, I referred earlier to a sample or model. Perhaps I should explain a bit more what this sample involves.

What was really done here was to take a number of cases, 27,000 and sometimes 54,000, depending on what we wanted to do. We took the records of individual taxpayers; and their record on a computer system was put on a tape, completely anonymously, by social insurance numbers. Then the social insurance number record of the unemployment insurance and the Canada Pension Plan were all merged, according to these social insurance numbers. After that, the numbers were scrambled, so that it became an indecipherable type of record. We had 54,000 of this type of record and by the combination of these various elements, it gave us an indication of the salary, the occupation, the sex, the age, the type of industry, and so on, of these various cases.

We had a group of economists who studied the various features of the present plan and the various features of the new plan, or whatever scheme we wanted.

Using this technique of the model, they simulated various situations, showing so many thousand people and what would happen on the basis of their pattern of work and so on.

I do not want to say that this is a magic box that gives a perfect result, but it gave at least a broad band indication of what type of experience we would obtain.

Having done this kind of simulation, we validated various elements of the program by known statistics, either of the present program or other statistics that are available from the labour force or other sources in "Statistics Canada."

Basically, the question was to determine how many people are likely to be unemployed, and for how many weeks of unemployment, this is, how many claims we are going to have, for how many weeks, and what would be the average amount of the claim; in summary, the number of claims, the duration of claims and the average amount. It could be that simple. These are the three factors which we had to determine and control, taking into account the various conditions we had here.

I can only say we have tried to validate these figures, as any reputable estimators would do. These are the figures which we submitted, which are all based on this type of estimate, based on samples and the available statistics.

We have had discussions with several people, including Mr. Cross. I think they are associated in some way. A number of people from companies or private citizens have come to us. To my knowledge, nobody has found that our figures did not hold water, on the basis of our estimates.

Our experience is based on what we know about the patterns of unemployment. We had and still have reputable economists working with us on the system. But the results are estimates. We admit that they are not perfect figures, and that they are estimates. However, we must work by them, unless somebody can come to us and say we are wrong by \$400 million, or something in this area, because we have either underestimated the number of claims or the duration of the benefits or the amount of benefits. These are all variable features. There is quite a bit of statistics published each year. One of the things least known outside is how long people stay on claim. Some are prone to make the easy assumption that a person gets on claim and remains on for 51 weeks. This is where a person estimating outside will say: there are so many thousand on claim, for 51 weeks, and that many times \$100, and there is your \$400 million. We had to do something a bit more precise. We know from experience that the average duration of claim is 14 to 15 weeks, and the average amount of benefit, even under the new system, is not going to be a \$100 but about \$58 or \$60. When you have these refinements, you get very different figures. I can only explain the wide gap by this overall superficial type of estimates compared to the more refined estimates we made.

Senator Connolly (Ottawa West): Mr. Chairman, I think we should say this for the benefit of the record, that Mr. DesRoches has indicated to us that all of the available information required to make an estimate of this kind has been considered by the commission. In

addition to that, they have gone to outside actuaries, to have these figures verified to the extent that they can. Certainly, we cannot fault them on any step that they have taken. It seems to me, from what I know of it, that the objection raised in the telegram is not perhaps as well founded as the person who sent the telegram thought. I think we have dealt with that point adequately.

Senator Flynn: I would add that if we have abnormally high unemployment it is very difficult to imagine that this scheme could be self-supporting. We can easily assume that it would cost the Government huge sums of money, maybe half a billion dollars.

On the other hand, the changes brought in by this bill seem to me to mean that they are including in the legislation a lot of what I would describe as safe employments, which are going to bring forth much of the additional benefits that are going to be expanded.

The Acting Chairman: Before we leave that topic, I would like to ask Mr. DesRoches two questions. Was there a very wide variation in the various estimates you got from your own people? You made a number of estimates based on models and you got outside people to do the same. Was there a very wide range in the different estimates?

Mr. DesRoches: I would prefer to have Mr. Steele answer this. He has some precise figures on the sickness side, which he could quote. There were ranges of estimates, but I do not think I can answer your question directly in this sense, as these were all separate estimates.

The Acting Chairman: You know none that went up into the billion dollar range?

Mr. DesRoches: No. We know what the present program is, and this is verifiable. For example, let me give you an illustration on things that can be verified. The maximum rate of benefit under the present plan, or even under the 10 per cent scheme, is \$58. If you look at the statistics of what happens month by month, the average payment, even now, is somewhere around \$35 or \$36. We know this. We know that you cannot take the maximum but you must take a reasonable average. The reasonable average is known and it is plotted from week to week and from month to month. In that sense, I would say that to somebody outside the range it could be different. To us, the range was within very narrow limits.

The Acting Chairman: You obtained certain results from the studies you had done. Was there a very great discrepancy between the various results?

Mr. DesRoches: The only area it would apply to would be the area of sickness. Perhaps Mr. Steele could answer that.

Mr. Steele: Mr. Chairman, in fact I have the rates quoted by William M. Mercer Limited. They simply say that the low cost would have been 52 cents, and the high cost 62 cents per \$100 of insurable earnings. It is a range of plus or minus 10 per cent on the estimate. The gross estimate for sickness is about \$240 million so we are

talking about plus or minus \$24 million on \$240 million as being the sort of range they feel is right. Actuarially, they cannot get more accurate than that, and we have taken the mid-point, of course.

On our other estimates for unemployment we have in fact recently verified our figures through another model, using an entirely different approach based on what is happening now and based on the assumption that the warrants, the size of the warrants and so on are related to the unemployment rate. That estimate is within 5 per cent of our original estimate in the Facts and Figures.

I do not think either Mr. Cross or the person who wrote that telegram realized that we are presently paying out at the rate of \$900 million a year under the present scheme, if you include the administration costs and 10 per cent supplement. We expect that rate of pay-out to increase to about \$1.1 billion next year with the higher benefits rates but off-set by a certain amount which will be saved through private sickness plans.

I received a letter from Mr. Cross recently in which he compares this to what we paid in 1970, which was a 5.5 per cent unemployment year in which, of course, the average benefit rates were very much lower. He confuses the 1970 payments with the figures we have given him which are for 1972. We have those figures to the parliamentary committee, because we felt that 1972 was very much more representative than going back to 1968 say. The figures would be lower but they would not mean that much because really what we are all looking at in

terms of the validity of the estimates is what is going to happen in 1972—not what happened in 1968.

Senator Smith: Mr. Chairman, in view of Senator John M. Macdonald's speech in the Senate chamber, and the full discussion we have had this morning, I move that we report the bill without amendment.

The Acting Chairman: Is it agreed that we report Bill C-229 without amendment?

Hon. Senators: Agreed.

The Acting Chairman: Is it also agreed that the explanation we have had today is adequate and that there is no need to call outside witnesses in accordance with the suggestion of the telegram we received?

Hon. Senators: Agreed.

Senator Smith: We can send them a copy of the record of today's proceedings.

Senator Connolly (Ottawa West): Mr. Chairman, we are very indebted to Mr. DesRoches, Mr. Steele and the other officials here for their fine explanation of this complex matter.

The Acting Chairman: That is true, Mr. DesRoches. On behalf of the committee, I wish to thank you very much.

The committee adjourned.

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THE SENATE OF CANADA

STANDING SENATE COMMITTEE

ON

HEALTH, WELFARE AND SCIENCE

The Honourable MAURICE LAMONTAGNE, P.C., *Chairman*

I N D E X

OF PROCEEDINGS

(Issues Nos. 1 to 7 inclusive)

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INDEX

BILL C-25

AN ACT RESPECTING CANADIAN NATIONAL ENVIRONMENT WEEK

Bill C-25

Amendments

Clauses 1, 2, Title, omit "National" 5:5, 5:7

Reported to Senate, with amendment 5:5

BILL C-188

AN ACT TO AMEND THE MERCHANT SEAMEN COMPENSATION ACT AND TO AMEND AN ACT TO AMEND THE MERCHANT SEAMEN COMPENSATION ACT

Bill C-188

Benefit rates

Computation 1:14

Foster parent, qualification 1:13, 1:14-18

Funeral expenses 1:13-14

Orphans 1:12

Widows 1:11-12

Coverage

Recipients of benefits, breakdown 1:7-8, 1:9, 1:12, 1:20

Seamen 1:7-10, 1:12-13

Canadian National Steamship employees 1:12-13

Workmen's Compensation Act 1:8-10

Merchant Seamen Compensation Board

Composition, organization 1:8

Operation, procedures for application 1:10, 1:14, 1:18

Purpose 1:7, 1:12

Reported to Senate, without amendment 1:5

Currie, J.H., Director of Accident Prevention and Compensation Branch, Labour Department

Statement 1:7

Hopkins, E.R., Law Clerk and Parliamentary Counsel

Benefit rates 1:13, 1:14

BILL C-202

AN ACT TO AMEND THE OLD AGE SECURITY ACT

Bill C-202

Cost escalation estimate

Guaranteed income supplement basis 2:7, 2:8

Cost of living 2% watermark 2:11-12

Universal flat rate basis 2:10

Disbursement fund 2:9

Guaranteed income supplement

Entitling qualifications 2:9, 2:12

Purpose 2:7-8

Rates, individual 2:8-9

Reported to Senate, without amendment 2:5

Hopkins, E.R., Law Clerk and Parliamentary Counsel

Amendment rights of Senate 2:13-14

Munro, Hon. John, Minister of National Health and Welfare

Statement 2:7-8

BILL C-203

AN ACT TO AMEND THE PENSION ACT AND THE CIVILIAN WAR PENSIONS AND ALLOWANCES ACT

Bill C-203

Amendments proposed

Clause 28

Exceptional incapacity (Section 59) 3:7, 3:24-25, 4:7-12,
4:13-16

"Benefit of the doubt" (Section 87) 3:14-19, 4:16-19

Benefit payments, pension income 3:7-8, 4:7-10

Canadian Pension Commission, budget 3:8

Discussion

Clause 7(3) – Presumption as to medical condition of mem-
ber on enlistment (Section 13 (5-7))
3:19-21, 4:12

Clause 13 – Additional pension for loss of paired organ or
limb (Section 28A) 4:12-13

Clause 14 – Attendance allowance (Section 30) 4:11, 4:13

Clause 20 – Determination of entitlement to pension of
deceased member (Section 36 A(3)) 4:13

Clause 28

Pension payable to disabled prisoner of war of the
Japanese (Section 57 (2)) 3:7, 4:10-11

Pension payable in respect of deceased prisoner of war of
the Japanese (Section 58) 4:10-11

"Leave to re-open", (Section 68) 3:22-23

Pension Review Board, (Sections 77-83) 3:10-14

National Veterans' Organizations of Canada, brief 3:9-11, 3:14,
3:19, 3:24-25

Pension income 4:7, 4:8-10

Reported to Senate, without amendment 4:5

Urgency of legislation, reasons 3:6, 3:7, 3:10, 4:7

Chadderton, C., Secretary, National Council, National Veterans Organizations of Canada

Letter to Committee chairman 3:9-10

Statements, Bill C-203 3:9-10

Clause 59 3:24-25

87 3:14

Committee to Survey the Work and Organization of the Canadian Pension Commission (Woods Committee)

Recommendations, report 3:9, 3:10-13, 3:14, 3:16, 3:17, 3:19, 3:21, 3:24, 4:11, 4:17-18

Hanmer, H., Service Officer, Dominion Command, Royal Canadian Legion

Statements, Bill C-203

Clause 7(3)(5b) 3:19

68 3:22-23

77-83 3:10-11

Hodgson, J.S., Deputy Minister, Department of Veterans Affairs

Statement, Bill C-203, Clause 59 4:7-8

Hopkins, E.R., Law Clerk and Parliamentary Counsel

Discussion, amending powers 4:14-17

Pension Review Board

Composition, qualifications 3:11-13, 4:19

BILL C-229

AN ACT RESPECTING UNEMPLOYMENT INSURANCE IN CANADA

Bill C-229

Background formulation 7:8-9

Benefit payments

Benefit systems outside U.I.C., problems 7:13-15

Eligibility requirements, abuses 7:10-11, 7:15-16

Maternity 7:17-18, 7:22

Rate scale 7:9-10, 7:11-12

Retirement 7:15-16, 7:17

Sample model, studies 7:8-9, 7:22-24

Seasonal workers 7:20-21

Sickness 7:17, 7:18, 7:22, 7:23-24

Claimant assistance service 7:12

Cost estimate, changes in policy, criticism 7:7, 7:18-21, 7:22-24

Coverage 7:16

Financing, "Unemployment Insurance Account" 7:21-22

Objectives, new features 7:9

Records

Processing delays 7:12-13, 7:15

Separation statement 7:17

Reported to Senate, without amendment 7:5

United States, comparison 7:16

Committee of Inquiry into the Unemployment Insurance Act (Gill Committee of Inquiry)

Study, recommendations 7:8, 7:9, 7:21

DesRoches, J.M., Chief Commissioner, Unemployment Insurance Commission

Statement 7:8-9

BILL C-232

AN ACT TO AMEND THE CIVILIAN WAR PENSIONS AND ALLOWANCES ACT

Bill C-232

Advertisement of changes 6:15

Reported to Senate, without amendment 6:5

BILL C-233

AN ACT TO AMEND THE WAR VETERANS ALLOWANCE ACT

Bill C-233

Advertisement of changes 6:12, 6:15

Concurrent changes

Benefit payments, widows, removal 6:8-9

Eligibility qualifications, relation to Old Age Security and Guaranteed Income Supplement 6:8, 6:9-11

Explanation 6:7

Reported to Senate, without amendment 6:5

Veterans affected 6:12-13

Dubé, Hon. J.E., Minister of Veterans Affairs

Statement, presentation by J.S. Hodgson,

Deputy Minister of Veterans Affairs 6:7-8

War Veterans Allowance

Payment to veterans living outside

Canada 6:9

War Veterans Allowance Board

Regulations, burial, treatment 6:11-12

BILL C-234

AN ACT TO AMEND THE PENSION ACT

Bill C-234

Advertisement of changes 6:12, 6:15-16

Increase basis 6:13-14

Reported to Senate, without amendment 6:5

Committee to Survey the Work and Organization of the Canadian Pension Commission (Woods Committee)

Recommendations, report 6:13

BILL S-11

AN ACT TO PROVIDE FOR THE OBTAINING
OF INFORMATION RESPECTING WEATHER
MODIFICATION ACTIVITIES

Bill S-11

Purpose 5:8, 5:11-13

Reported to Senate, without amendment 5:5

Weather modification activities

Accuracy, maritime forecasts 5:10-11

Fog 5:9-10

Future 5:9, 5:11

Hurricanes 5:9

International organizations 5:10

Jurisdiction, regulation 5:8, 5:11-12

Rain 5:8, 5:11, 5:12

United States 5:9, 5:12

Wright, D.J., Liaison Meteorologist, Department of Fisheries and Forestry

Statement 5:8

Appendices

Issue 1

—Currie, J.H., Director of Accident Prevention and Compensation Branch, Department of Labour, letter to Hon. H.J. Robichaud, Acting Chairman, Standing Senate Committee on Health, Welfare and Sciences, Dec. 11, 1970 1:20

—Merchant Seamen Compensation Act, Summary of current awards, October 1970 (table) 1:20

Issue 6

A—Hodgson, J.S., Deputy Minister, Department of Veterans Affairs, letter to Hon. C.W. Carter, Acting Chairman, Senate Committee on Health, Welfare and Science (April 7, 1971)

—Advertisements of Bills C-232, C-233, C-234 published by Department of Veterans Affairs 6:15-16

B—Dunphy, K.J., Service Officer, Royal Canadian Legion, letter to J.A. Hinds, Assistant Director, Committees Branch, Senate (April 6, 1971)

—Chadderton, H.C., National Secretary, National Council of Veterans Associations, letter to J.A. Hinds, Assistant Director, Committees Branch, Senate (April 6, 1971) 6:16

Documents

—Chadderton, C., Secretary, National Council, National Veterans Organizations, letter to Hon. M. Lamontagne, Chairman, Committee on Health, Welfare and Science 3:9-10

—Kroeker, John, President, Canadians for Responsible Government, telegram to Hon. Speaker, Senate 7:7

Witnesses

—Anderson, T.D., President, Canadian Pension Commission 3:7-20, 4:9-13

—Chadderton, C., Secretary, National Council, National Veterans Organizations of Canada 3:5-25, 4:7, 4:11-12, 4:17-18

—Corbin, Eymard, M.P., Parliamentary Secretary to the Minister of Fisheries and Forestry 5:8-12

—Currie, J.H., Director, Accident Prevention and Compensation Branch, Department of Labour 1:7-18

—DesRoches, J.M., Chief Commissioner, Unemployment Insurance Commission 7:8-23

—Hammer, H., Service Officer, Dominion Command, Royal Canadian Legion 3:10-12, 3:17-21

—Hodgson, J.S., Deputy Minister, Department of Veterans Affairs 3:9-15, 4:7-16, 6:7-14

—Munro, Hon. John, Minister of National Health and Welfare 2:7-15

—Reynolds, P.E., Chief Legal Adviser, Veterans Affairs Department 3:7-8, 3:15, 4:13-18

—Richardson, Dr. H., Chief Medical Adviser, Canadian Pension Commission 3:19-21, 4:11-14

—Slater, E.H., Service Officer, Dominion Command, Royal Canadian Legion 3:20

—Steele, D.J., Director General, Planning, Finance and Administration, Unemployment Insurance Commission 7:18-24

—Thompson, D., Chairman, War Veterans Allowance Board 6:8-13

—Wright, D.J., Liaison Meteorologist, Fisheries and Forestry Department 5:8-13

Committee Members

Chairman:

—Lamontagne, Hon. Maurice (Inkerman) 2:7-8, 2:10-15

Acting Chairman:

—Carter, Hon. Chesley W. (The Grand Banks) 3:5-9, 3:11-12, 3:14-18, 3:20-23, 3:25, 4:7-8, 4:10-16, 4:18-19, 5:7-8, 5:10-11, 5:13, 6:7-14, 7:7-8, 7:10-14, 7:17-21, 7:23-24

—Robichaud, Hon. H.J. (Gloucester) 1:7, 1:9, 1:12, 1:18-19

Senators present:

—Belisle, Hon. Rhéal (Sudbury) 4:10

—Blois, Hon. Frederick M. (Colchester-Hants) 5:8, 5:13

—Cameron, Hon. Donald (Banff) 2:8, 2:10, 2:12-15

—Carter, Hon. Chesley W. (The Grand Banks) 1:7-18, 2:8-9, 2:12

—Connolly, Hon. John J. (Ottawa West) 7:8-11, 7:20-24

—Croll, Hon. David A. (Toronto-Spadina) 1:8-10, 1:12, 1:14, 1:16-18

—Denis, Hon. Azellus (Lasalle) 5:11-12

—Fergusson, Hon. Muriel McQ. (Fredericton) 3:5

—Flynn, Hon. Jacques (Rougemont) 2:9-10, 7:7, 7:9, 7:13-14, 7:17-20, 7:23

—Fournier, Hon. Sarto (DeLanaudière) 3:8-9, 3:11, 3:13, 3:21-22

—Hays, Hon. Harry (Calgary) 7:10, 7:13, 7:15-17

—Inman, Hon. F. Elsie (Murray Harbour) 1:8, 1:10, 1:12, 1:16, 3:11, 3:13, 3:16-18, 3:23, 4:9-11, 4:15-16, 4:19, 5:10, 5:12-13, 6:9

—Kinneer, Hon. Mary E. (Welland) 2:12, 5:9-10

—Macdonald, Hon. John M. (Cape Breton) 1:11-12

—McGrand, Hon. Fred A. (Sunbury) 5:12

—Michaud, Hon. Hervé J. (Kent) 5:12

—Phillips, Hon. Orville H. (Prince) 3:5-9, 3:11-16, 3:19-23, 4:8-9, 4:11-18, 5:7, 6:8, 6:10-13

—Quart, Hon. Josie D. (Victoria) 3:12-13

—Robichaud, Hon. Hédard (Gloucester) 6:14

- Smith, Hon. Donald (Queens-Shelburne) 1:8-13, 1:18, 3:6-9,
3:16, 3:18, 3:22, 3:25, 4:9, 4:13-16, 5:7-11, 7:7, 7:10, 7:12,
7:21, 7:24
- Sullivan, Hon. Joseph A (North York) 4:12, 4:14, 4:16
- Thompson, Hon. Andrew E. (Dovercourt) 4:12, 4:18, 5:7-8

Present, Non-Members:

- Benidickson, Hon. William Moore (Kenora-Rainy River) 2:8-14
- Forsy, Hon. Eugene A. (Nepean) 2:10-15
- Macnaughton, Hon. Alan (Sorel) 5:7
- White, Hon. George S., (Hastings-Frontenac) 3:6-9, 3:11-12,
3:15-16, 4:10, 6:8-9, 6:11-14

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FOURTH SESSION—TWENTY-EIGHTH PARLIAMENT

1971-1972

THE SENATE OF CANADA

PROCEEDINGS OF THE STANDING SENATE COMMITTEE ON **HEALTH, WELFARE AND SCIENCE**

The Honourable MAURICE LAMONTAGNE, P.C., *Chairman*

No. 1

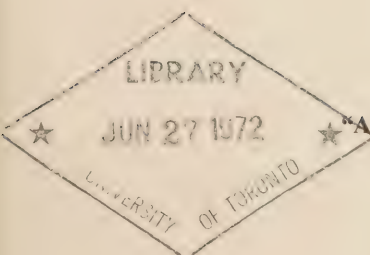
THURSDAY, MAY 18, 1972

Complete Proceedings on Bill C-207:

"An Act to amend the Old Age Security Act".

REPORT OF THE COMMITTEE

(Witnesses and Appendices:—See Minutes of Proceedings)



THE SENATE COMMITTEE ON HEALTH,
WELFARE AND SCIENCE

Chairman: The Honourable Maurice Lamontagne

The Honourable Senators:

Bélisle	Hastings
Blois	Hays
Bonnell	Inman
Bourget	Kinnear
Cameron	Lamontagne
Carter	Macdonald
Connolly (<i>Halifax North</i>)	McGrand
Croll	Michaud
Denis	Phillips
Fergusson	Quart
Fournier (<i>de Lanaudière</i>)	Smith
Fournier (<i>Madawaska- Restigouche</i>)	Sullivan
	Thompson
	Yuzyk—(26)

Ex officio Members: Flynn and Martin

(Quorum 7)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, Thursday, May 18, 1972:

The Senate resumed the debate on the motion of the Honourable Senator Martin, P.C., seconded by the Honourable Senator McDonald, for the second reading of the Bill C-207, intituled: "An Act to amend the Old Age Security Act".

After further debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The bill was then read the second time.

The Honourable Senator Martin, P.C., moved, seconded by the Honourable Senator McDonald, that the Bill be referred to the Standing Senate Committee on Health, Welfare and Science.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

Robert Fortier,
Clerk of the Senate.

Report of the Committee

Thursday, May 18, 1972.

The Standing Senate Committee on Health, Welfare and Science to which was referred Bill C-208, intituled: "An Act to amend the Pension Act, the War Veterans Allowance Act, the Civilian War Pensions and Allowances Act, the Children of War Dead (Education Assistance) Act and the Department of Veterans Affairs Act to provide for the annual adjustment of pensions and allowances payable thereunder", has in obedience to the order of reference of May 18, 1972, examined the said Bill and now reports the same without amendment.

Respectfully submitted.

Maurice Lamontagne,
Chairman.

Minutes of Proceedings

Thursday, May 18, 1972.

(1)

Pursuant to notice, the Standing Senate Committee on Health, Welfare and Science met this day at 9.13 p.m.

Present: The Honourable Senators Cameron, Carter, Fergusson, Flynn, Hastings, Inman, Lamontagne, MacDonald, Martin, McGrand, Phillips, Quart and Thompson. (13)

Present, but not of the Committee: The Honourable Senators Benidickson, Forsey, Grosart, Isnor, Kickham, Lafond, Langlois and McNamara. (8)

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

On Motion of the Honourable Senator Cameron, it was Resolved to print 800 copies in English and 300 copies in French of the Proceedings of this Committee.

The Committee proceeded to the consideration of Bill C-207 "An Act to amend the Old Age Security Act".

The following witnesses were heard in explanation of the Bill:

Department of National Health and Welfare:

Dr. J. W. Willard,
Deputy Minister, (Welfare);

Mr. J. B. Bergevin,
Senior Assistant Deputy Minister (Operations);

Mr. J. A. Blais,
Assistant Deputy Minister (Income Security).

Department of Supply and Service:

Mr. D. R. Yeomans,
Assistant Deputy Minister (Operational Services).

During the question period that followed the Honourable Senator Phillips moved:

That representatives of IBM be summoned before the Committee to testify if the Company had advised the officials of the Department of National Health and Welfare that IBM had to be notified not later than May 19, 1972, of the increase in the Old Age Pension, in order that the pensioners could receive their cheques by the end of June.

After debate, the motion was defeated on division.

On Motion duly put it was Resolved to report the said Bill without amendment.

At 10.58 the Committee adjourned to the call of the Chair.

Attest:

Patrick J. Savoie,
Clerk of the Committee.

The Standing Senate Committee on Health, Welfare and Science

Evidence

Ottawa, Thursday, May 18, 1972.

The Standing Senate Committee on Health, Welfare and Science, to which was referred Bill C-207, to amend the Old Age Security Act, met this day to give consideration to the bill.

Senator Maurice Lamontagne (*Chairman*) in the Chair.

The Chairman: Honourable senators, I see a quorum. We will come to order.

Senator Flynn: I am not sure that there is a quorum.

Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel: Senator Flynn, Rule 67(k) reads, in part, as follows:

(k) The Senate Committee on Health, Welfare and Science, composed of thirty members, seven of whom shall constitute a quorum, to which—

and so on.

Senator Flynn: May I look at that, please?

Mr. Hopkins: Certainly.

Senator Flynn: All right. We can proceed now.

The Chairman: Before we proceed with the clause-by-clause study of this bill I should like those who have general comments to make about it to make them at this stage. After that we can proceed clause by clause. That is my proposal.

Senator Flynn: I have no objection to the idea of those who have general comments making them now, but as to proceeding clause by clause, is that necessary?

The Chairman: Well, we have to do this in committee. I prefer to give more freedom to members of the committee to make general comments before calling each clause.

Senator Flynn: May I make a comment which will be in the form of a question? I made my position quite clear, that I wanted to know why we would have to pass this bill so quickly, because it has been suggested that if the bill does not receive royal assent tomorrow it is obvious it cannot receive royal assent tonight. It would be difficult to find His Excellency the Governor General or a deputy to come over right away for royal assent, although possibly the Leader of the Government could arrange that also; he has infinite resources.

The Chairman: This is beyond his power.

Senator Flynn: I would not say that. He will hold it against you. I am wondering whether royal assent being given Friday evening will really make a difference in sending out the cheques to the pensioners.

Senator Martin: It will for the month of June.

Senator Flynn: No, let us say royal assent is given on Tuesday next. There are only three days in which no work is performed on Parliament Hill. Is anyone in a position to give an explanation on this particular point?

The Chairman: Dr. Willard, the Deputy Minister (National Welfare) of the Department of National Health and Welfare and his colleagues are with us, and I am sure that they can answer this question.

Dr. J. W. Willard, Deputy Minister (Welfare), Department of National Health and Welfare: Mr. Chairman, first of all I would like to introduce the officials who are with me this evening. To my right is Mr. Yeomans, Assistant Deputy Minister of the Department of Supply and Services. That department is involved with the question of getting cheques out to pensioners. To his right is Mr. Bergevin, the Senior Assistant Deputy Minister in charge of operations for the Department of National Health and Welfare (Welfare). On his right is Mr. Blais, the Assistant Deputy Minister of Income Security, who is directly responsible for administering the old age pension program. To his right is Mr. du Plessis, a legal adviser from the Department of Justice.

The Chairman: That list should satisfy you.

Dr. Willard: I will call upon some of these gentlemen to supplement my remarks from time to time.

After the budget was announced the minister asked me when the new rates could be implemented. I indicated that it would be June or July, depending upon when the legislation was passed. He asked me what the latest date would be if the cheques were to go out in June. I consulted with Mr. Bergevin, who is the Senior Assistant Deputy Minister, Program Operations, and he in turn consulted with Mr. Yeomans and Mr. Blais, and we can explain the reasons we indicated to the minister, and he in turn to the government, why May 19 was a very critical date from our standpoint. That is the date we would wish to see legislation passed if we are going to put out June cheques rather than July cheques.

I would like to indicate that the size of the operation we are facing in order to get these cheques out is large indeed. We have 1,800,000 people to deal with across the country, about 800,000 are receiving OAS pensions and around 1 million of them are receiving OAS and GIS payments. Some of these are partial pension payments and some are full pension payments. The legislation provides for retroactivity, and this complicates the process in terms of how we make the adjustment of our records. I would

indicate that we do not have a computer. We have our records on an addressograph. There are a number of reasons why we need some leeway in terms of the mechanical process.

There are other critical problems as well. Number one is the question of the cheques themselves. I will ask Mr. Yeomans to outline the problems we are facing in this regard. We have to be poised, as of tomorrow, to order these cheques for preprinted amounts based on the general rate, and we must be ready to go as soon as the legislation is passed. Perhaps Mr. Yeomans could elaborate on this point.

Mr. D. R. Yeomans, Assistant Deputy Minister, Operational Services, Department of Supply and Services: Mr. Chairman, the thing which is unusual about this exercise is that the cheques for old age security and guaranteed income supplement that are issued for what we regard as a standard amount—that is, the basic old age security, or the basic old age security plus the maximum guaranteed income supplement payments—are prepared and printed with the amount already on the cheque, as well as the serial number punched into the cheque. This is done by the company that produces the cheques. Honourable senators might expect that we have a stack of blank cheques and that when told the amount we would simply start issuing the cheques in the appropriate amounts. This is true in some government programs, but it is not true in regard to the bill which is before this committee. It so happens that 1,300,000 of the 1,800,000 cheques will have the amounts printed on them in advance by the company producing the cheques. This is why we need some leeway. We must place an order with the company to have the cheques produced and the amounts preprinted on them.

The practice has been to deliver the old age security cheques to the recipients on the third banking day from the end of the month, and in June of this year that would be the 28th. In order to do this the Post Office has told us that we must have all 1.8 million cheques in their hands by noon on June 23. The critical office is the Toronto office that produces the old age security cheques for Ontario, some 649,000 old age security and guaranteed income supplement cheques. It requires about 70 hours to run the equipment in our Toronto office. We must therefore begin addressing these cheques on Saturday, June 17.

Senator Flynn: Saturday, June 17?

Mr. Yeomans: Yes, that is correct.

Senator Phillips: Are you working on Saturdays?

Mr. Yeomans: We will have to work on Saturday to meet the delivery date.

Senator Phillips: This is a rather unusual situation, is it not?

Mr. Yeomans: We will have to work on Saturday to meet this date.

Senator Flynn: That is one way or the other?

Mr. Yeomans: Working back from that date, we must have the 1,800,000 cheques delivered to our issuing offices

in each provincial capital across the country. The supplier has indicated that in order to do that we would ship them air express, beginning June 12. So, from the 12th to the 16th June the cheques which would have been preprinted and prepunched would be shipped air express to our issuing offices across the country. The supplier has indicated that in order to meet that deadline he has to begin printing the cheques on Tuesday, May 23, and in order to start the presses rolling next Tuesday he has to do his art work and prepare the electrotypes over this weekend.

This is how we arrived at the delivery date of Wednesday, June 28, and subsequently how we arrived at Friday, May 19, when asked the question by officials from the Department of National Health and Welfare when we would have authority to place the order for the cheques.

Senator Flynn: That is the answer you gave to the minister, of course; but did you figure out what you would have to do if the bill received royal assent on May 23—the difference that it would make?

Mr. Yeomans: Mr. Chairman, we discussed the date with our supplier. We discussed it with very senior officials. Their first statement to us was a date which was about a week earlier than May 19, in order to make the schedule; and we leaned on them hard because we are a big customer of theirs, and they agreed to back up to May 19.

Senator Flynn: They were able to save about a week?

Mr. Yeomans: Yes.

Senator Flynn: That is pretty convincing. That is all what I wanted to know.

Senator Phillips: I have a couple of questions. I noticed that the witness portrayed—

The Chairman: Before you go on with your question, Senator Phillips, Senator Flynn is a very good lawyer and I would like to clear up the conclusion he arrived at a moment ago.

Senator Flynn: If you insist, it is all right. If you think nobody else can do it but you, go ahead.

The Chairman: No, no; but you said that you were quite satisfied that they had squeezed in—

Senator Flynn: But apparently you think nobody else should accept that.

The Chairman: I think that as chairman of the committee I am allowed to ask questions.

Senator Flynn: Oh, you are allowed to take sides, certainly, and you usually do.

Senator Phillips: Did I understand you to say that you are allowed to take sides and ask questions? I thought you were supposed to be the chairman; and a chairman does not take sides and ask questions.

The Chairman: Well, I was asking a question. It was a technical question, as a supplementary to what Senator Flynn asked.

Senator Flynn: I warn you that you are following a dangerous course.

Senator Phillips: You are following a dangerous course in that you are attempting to direct this committee meeting. You are attempting that right now, and you are not going to do it.

The Chairman: I have been directing committee meetings now for four years.

Senator Phillips: And we have had our fill of you and your directing committee meetings.

Senator Martin: Mr. Chairman, I think it is certainly open—

Senator Phillips: Are we going to be honoured by you again?

Senator Martin: Surely, we can conduct this in an orderly way? I think it is open to the chairman to comment.

Senator Phillips: It is not for the chairman to decide when I can ask a question.

Senator Martin: But the chairman was in the process—

The Chairman: If you want to vote me out as chairman, I am quite ready to take a vote.

Senator Martin: Mr. Chairman, you were in the process of elucidating a point, and I think you ought to be allowed to do that. You started to do it—

The Chairman: I am quite sure that Senator Flynn, being fair as he is—

Senator Flynn: I have no objection, but I do not see why you would be so fast in cross-examining the witness. Suppose that I have examined the witness. You are cross-examining him. I do not see why it should be you instead of the Leader of the Government, who has been defending this thesis for two weeks—

The Chairman: The Leader of the Government is not my boss here; I am the boss.

Senator Flynn: You can make all the jokes you want, but do not make that kind of joke to me.

The Chairman: No, you won't do that to me.

Senator Flynn: I will do it to you.

The Chairman: Oh, you can do it to me, but it will not be the truth.

Senator Martin: Mr. Chairman, you are allowed to make a comment.

The Chairman: If I am not allowed to ask any question . . .

Senator Flynn: You are allowed; I said it was not proper.

Senator Phillips: I do not think the chairman is allowed to ask a question.

Senator Flynn: Oh, yes, he can . . .

The Chairman: What is the use of being a chairman, then? I will put you in the chair.

Senator Phillips: The chairman is the deciding officer; he is not the questioning officer.

The Chairman: I wanted to ask the question . . .

Senator Phillips: I have the privilege of asking questions . . .

The Chairman: Ask your question.

Senator Phillips: If it is not annoying "Your Excellency" too much, may I ask these questions? I was impressed by the fact that the witness held up a cheque, a computerized cheque. Would you like to raise it again, please? You told me you do not have a computer. Why are those holes in that cheque?

Mr. Yeomans: The holes are in the cheque to be read by a computer that is used to reconcile the cheques after they come back in through the banking system.

Senator Phillips: I understood you to say that you do not have a computer.

Mr. Yeomans: The department has many computers, but we do not use computers to issue these cheques.

Senator Phillips: I am not a computer expert, but as a layman I find it awfully confusing that you will hold up a cheque with certain holes punched in it from a computer, and then say you use them in a different system.

Dr. Willard: Perhaps I can help. I was the one who suggested that we do not have a computer. The point I was trying to make is that in making changes in the amounts of the cheques, if you have a computer it is much simpler to do this. In the process that we will have to go through to carry out this undertaking, which is very large indeed and very complex, we have to work with Addressograph plates, and we have to put the changes in amounts on plates for many different categories. We cannot do that automatically by computer. The computer is used, as Mr. Yeomans has said, for this other purpose after the cheques come back in through the banking system.

Senator Forsey: Is that computer in your department or Mr. Yeomans' department?

Dr. Willard: Mr. Yeomans'.

Senator Phillips: What computer system do you use?

Mr. Yeomans: We have 22 computers in our department.

Senator Phillips: I do not care about the number. I want to know what company. Is it IBM, or what?

Mr. Yeomans: We have IBM computers, Univac computers and Honeywell computers.

Senator Phillips: Would it be fair for me to direct a question to the chairman?

The Chairman: I am not allowed to answer questions or to raise a question.

Senator Phillips: I would ask if he would call the computer people and see if they can handle the situation. Because of the confusion in the computer system and the unem-

ployment cheques, I think we should hear from the computer people that they can get these cheques out on the deadline set by the government.

The Chairman: I think this question is completely out of order because it is not the responsibility of this department...

Senator Phillips: The responsibility of what department?

The Chairman: Of the Department of...

Dr. Willard: Supply and Services.

Senator Phillips: You have been told the Department of Supply and Services. Are you...

Senator Flynn: We should have someone from the Department of Supply and Services...

The Chairman: Not in relation to that kind of question.

Senator Flynn: Why not?

The Chairman: Because it was related to the sending out of unemployment insurance cheques.

Senator Phillips: I did not mention unemployment insurance cheques here.

The Chairman: Yes, you did.

Senator Forsey: Yes.

Senator Flynn: Suppose he did?

The Chairman: It is out of order as far as we are concerned.

Senator Phillips: There is still no reason why I cannot be assured that the computer company can handle it.

The Chairman: Questions regarding unemployment insurance cheques are out of order.

Senator Phillips: I simply suggested I should like to have officials of the computer company come in...

Senator Flynn: Mr. Chairman, on your fast ruling I would say this: We are here to find out if in practice something can be done, and what can be done. If the experience in this connection of another department is relevant, we should be allowed to hear it. Whether you say it is out of order is your business, but I do not agree with you.

Senator Forsey: Mr. Chairman, surely the perfectly simple point already established.

Senator Flynn: Well, we know the truth.

Senator Thompson: Surely, others can speak?

Senator Flynn: I am listening to him.

Senator Forsey: I merely want to say, Mr. Chairman, that it seems to me that Dr. Willard has already stated that in making out these cheques they have not got in his department a computer to do this. It has been done by an addressograph. The computer which they have in the

Department of Supply and Services is a computer which does a completely different job after the cheques come back from the bank. I thought that had been established, and I cannot see why there should be any confusion about it.

The Chairman: Yes.

Senator Forsey: Am I mistaken, or was that point brought out?

Dr. Willard: That is correct, Mr. Chairman.

Senator Martin: May I ask the witness...

Senator Phillips: May I ask...

The Chairman: Please, Senator Phillips.

Senator Martin: May I ask Mr. Yeomans a question? You have assigned this to an outside company who are prepared to begin work on Saturday... is that right?

Mr. Yeomans: That is correct, sir.

Senator Martin: And what company is that... IBM?

Mr. Yeomans: IBM is the company that produced these card cheques for us, yes.

Senator Martin: And they have told you that they must have them by the date suggested by the President of the Privy Council?

Mr. Yeomans: Yes. The date suggested by the President of the Privy Council, I believe, came as a result of negotiations between officials in the Department of National Health and Welfare and our own department as to what was the last possible date we could place an order for cheques in order to have them delivered into the hands of the recipients on June 28.

Senator Martin: And the last possible date is Saturday?

Senator Flynn: That, I would say, is a leading question.

Mr. Yeomans: That is correct. In negotiations with officials of IBM some weeks ago we were told that May 16 was the last date.

Senator Flynn: Who told you?

Mr. Yeomans: Officials of IBM.

Senator Flynn: Who told you?

Mr. Yeomans: I cannot name the person because I was not the one who had direct conversation.

Senator Flynn: Then it is only hearsay that you are telling us now.

Some Hon. Senators: Oh'

Senator Flynn: Well, is it hearsay or not?

Allow me to question the witness, and mind your own business.

Senator Martin: Senator Flynn,...

Senator Flynn: I will be polite, but I am questioning the witness.

Senator Phillips: I agree.

Senator Flynn: Who told you?

Senator Phillips: The idea that we cannot come in here and question the witness is atrocious.

Senator Flynn: Who told you?

Senator Martin: Mr. Chairman, perhaps I could be allowed to finish my question?

Senator Flynn: I am asking a very simple question. Who told you?

Senator Martin: He told you he did not meet . . .

Senator Flynn: Who told you?

Senator Martin: He answered your question.

Senator Flynn: I want to know the name of the individual who told you.

Senator Martin: He told you he did not know the man's name.

Senator Flynn: Do you have his name?

Mr. Yeomans: The name of the official at IBM? No, I do not.

Senator Flynn: Then what you are telling us is hearsay. Someone else told you.

Mr. Yeomans: I have officials who concern themselves directly with the supply of cheques for this and many other programs.

Senator Flynn: But who told you?

Senator Martin: Allow him to finish, please.

Mr. Yeomans: These are officials of our department who deal regularly with this corporation. They were the ones who were in discussion with the corporation and explained the problem that they were faced with, and it was as a result of those discussions that I was advised by my senior officials that May 19 was the last date that we could place an order in order to have the cheques in our offices across the country in time to meet the deadline.

Senator Flynn: I understand that. Are you able to find out the name of the senior official of your department who spoke with the senior official of IBM so that I could get the name of the official at IBM who could then come here and tell us directly, instead of going through an intermediary who is only repeating what someone else has told him?

Mr. Yeomans: If I can reach him by phone, I am sure I can do that.

Senator Flynn: Well, if you can, we should like him to come here either tonight or tomorrow.

The Chairman: Tonight.

Senator Martin: This witness has stated that May 19 is the last date.

May I ask Dr. Willard if there are any other problems in connection with this matter. For instance, I believe you have a process of advertising, do you not?

Dr. Willard: Yes, Mr. Chairman. On each occasion when we have a change in the rate of old age security or guaranteed income supplement and every time there is an amendment we have a major task to get the word to the old people across the country so that they know exactly what was happened. With regard to the newspaper advertisements, again we are up against a very tight deadline and this also applies to the printing of the small inserts for the cheques.

Senator Martin: Well, let us deal with the advertising process.

Dr. Willard: Perhaps I could ask Mr. Bergevin to report on the advertising situation.

Senator Phillips: Mr. Chairman . . .

The Chairman: Would you please let the witness answer the question first?

Senator Phillips: I am used to diversionary tactics. I will come back to my subject.

The Chairman: We have all night, Senator Phillips, so do not become worried.

Senator Phillips: I am prepared to stay all night.

Senator Flynn: I am not.

Senator Martin: Answer the question, please.

Mr. J. B. Bergevin, Senior Assistant Deputy Minister (Operations), Department of National Health and Welfare: For the newspaper advertising it is absolutely necessary to have the final draft of the material to be printed over the weekend, as it must be translated and given to the printers on Monday.

Senator Martin: Monday next?

Mr. Bergevin: Yes, Monday next. For the special mailout which is to precede the issuance of cheques for the purpose of explaining to pensioners what the different rates are, the arrears and the amounts of their cheques, the text of the special mailouts also has to be prepared and given to the printer.

Senator Martin: I should . . .

Senator Phillips: Mr. Chairman, on a point of order . . .

The Chairman: Just a moment, please; there is a supplementary question. You will have an opportunity for your point of order.

Senator Phillips: A point of order takes precedence, Mr. Chairman. There is reference now to advertisements and mailouts. We have not seen those. If we are going to discuss them, we should see them.

The Chairman: I do not think it is a good point of order.

Senator Phillips: I think it is a valid point of order.

Senator Martin: I should like to follow through on this. May I pursue my question, Mr. Chairman?

Senator Phillips: In accordance with parliamentary procedure, if you are going to refer to certain documents, those documents should be produced, and I am now asking for those mailouts and advertisements which are done at the taxpayers' expense, and I want them now. I am quite in order in asking for them.

The Chairman: My ruling is that your point of order is not well taken. If the committee wants to rule otherwise they are...

Senator Flynn: You are very brave.

Senator Phillips: Yes, you are very brave. In the meantime...

The Chairman: There is a question, Senator Phillips.

Senator Martin: Mr. Bergevin, you told us...

Senator Phillips: This is not a meeting between Senator Martin and yourself, Mr. Chairman.

The Chairman: Senator Martin has the right to ask questions too.

Senator Phillips: Well, he referred to certain documents, and I think this committee should have those documents.

Senator Hastings: Mr. Chairman, I believe those documents were going to be prepared over the weekend. They are not prepared now.

Senator Phillips: He said they would be published. He did not say they were going to be prepared.

Senator Hastings: I heard they were to be printed on the weekend.

Senator Martin: May I pursue my question, Mr. Chairman?

The Chairman: Yes.

Senator Phillips: I ask...

The Chairman: Please, Senator Phillips! I am the Chairman. Please, Senator Flynn, let us have some order.

Senator Flynn: I have not been speaking. What is the matter with you?

Senator Phillips: You are not going to have order if you conduct this hearing the way you are.

The Chairman: Senator Martin has been asking a few questions.

Senator Flynn: What are you asking me now? I did not say a thing. I have been silent for two minutes. Let us keep me that way.

Senator Martin: You have said that Monday is the last day.

Mr. Bergevin: Yes. We are waiting for the terms of the legislation before getting the final draft, of course.

Senator Martin: What is the last day?

Mr. Bergevin: There is another deadline that we have to meet. There is also the insert with the June cheque, which also requires that we have the final draft of it over the weekend.

Senator Martin: What does that insert contain?

Mr. Bergevin: That insert will contain details concerning the various rates for basic OAS and the guaranteed income supplement for single and married couples.

Senator Martin: Does it also include the escalation?

Mr. Bergevin: It does, and the retroactivity.

Senator Martin: For January, February and March. It is a complicated structure then, is it not?

Mr. Bergevin: We have definitely to explain that to the pensioners, because they will not understand why they get a cheque of such-and-such an amount.

Senator Martin: It is an explanatory thing to them of the nature of the cheque they receive.

Senator Phillips: A wonderful explanation! Keith Davey has been repaid.

Senator Martin: We are thinking of the old age pensioners.

The Chairman: Senator Phillips.

[Translation]

Senator Flynn: This is only a text which you have prepared?

Mr. J. B. Bergevin Senior Assistant Deputy Minister (Welfare) Department of National Health and Welfare: A text of the Department...

Senator Flynn: An explanatory text of the modifications according to the law?

Mr. Bergevin: Precisely, and that is included in their cheque, in other words, for five months retroactive.

Senator Flynn: Frankly speaking, is that letter not written already?

Mr. Bergevin: Of course, we have a first version, that is a version of the bill as proposed to the government.

Senator Flynn: All right.

Mr. Bergevin: But when we are requested to set up a program and have the text sent to the printer by Monday morning, at the latest, I surely must have the final version.

Senator Flynn: You could follow the same procedure as the Department of Revenue in terms of the Income tax Act, and prepare the text before the law is passed—have it printed since you already know what will go in it?

Mr. Bergevin: That is not my responsibility.

Senator Flynn: I know it is not your responsibility.

The Chairman: This question is somewhat out of order.

Senator Flynn: Well, it is not out of order, since I admit it is not his responsibility.

The Chairman: You have answered the question.

Senator Flynn: I may have answered the question, but he has also agreed the answer was there.

[Text]

Senator Martin: May I ask another question?

Senator Phillips: I do not get a chance, Mr. Chairman, do I?

The Chairman: I gave you a chance, but unfortunately your leader preceded you.

Senator Martin: May I ask whether you could squeeze another day, Dr. Willard? You said May 19 was the day given to you. Would there be a possibility of squeezing another day or other days?

Dr. Willard: It is quite clear to us, Mr. Chairman, that the 19th is the deadline. We need this weekend to work on it. When we were asked to give a date, we gave it on the basis that if they wanted a June cheque, if they wanted the increased rates to go out in a June cheque, this was the deadline within which we would have to work. We cannot reverse the process. We have already started to get our staff to do the things they can do, to start on changes of rates for the plates, and so on. If we get halfway in the process and the legislation is held up and that part has to be reversed, and we can get ourselves so mixed up that we will be in the situation that unemployment insurance got itself into, and that is what we want to avoid.

Senator Martin: The unemployment insurance got itself in the position where it was not able to deliver cheques when the people had a right to receive them. Is that the point?

Dr. Willard: Yes, senator. With this kind of case load the switchboards get jammed very quickly, and the number of people that write in overburden the administrative capacity. There are different rates to be taken into account. For instance, take the single OAS?GIS rate; it is \$45 for the retroactive feature January to March; it is \$24.60 for the retroactive period April to May; then it is the \$150 for the regular June cheque. That comes to \$219.60. Our publicity has to bring this kind of thing out, in both the inserts and the newspapers. This is the kind of administrative problem we face.

Senator Martin: What is the last day in May for the advertising?

Mr. Bergevin: For the advertising we intend to use the last three days of the month, at the very time the pensioners receive their cheques, because they will not understand why they do not get the cheque immediately.

Dr. Willard: They will wonder why the May cheque does not reflect what is being discussed here.

Senator Martin: Is that the usual practice?

Dr. Willard: That is the practice we have followed in the past. As you know, I have been deputy since 1960 and have gone through this process many times. The bee is always on the administrator to come through, and we have come through for the Parliament of Canada time and again. We are trying to do it this time, and all we ask is co-operation. Otherwise, let us pay the cheque in July.

Senator Martin: And if you do not have this bill you will not be able to pay the cheques in June?

Mr. Bergevin: That is correct.

Senator Flynn: That is what you have heard.

The Chairman: Senator Cameron.

Senator Phillips: O.K., I am written off, if that is your wish.

The Chairman: No, no, you are first.

Senator Phillips: I have a number of questions, Mr. Chairman. The witness—I am sorry, I have forgotten the name.

Mr. Bergevin: Bergevin.

Senator Phillips: Mr. Bergevin, you said you started negotiations several weeks ago with IBM and they gave you a final date of May 19. At what specific time did you begin negotiations with IBM?

Mr. Yeomans: The answer is the day after the budget was read. I, like a lot of other people, heard it that evening, and thought, "Oh, my gosh!"

Senator Langlois: That is an honest answer.

Senator Phillips: A lot of people have said that. Do you expect me to believe that you began your negotiations with IBM no earlier than the date of the budget?

Mr. Yeomans: I had no idea there was any change being planned, none whatsoever.

Senator Phillips: Mr. Chairman, I have had your assurance in the Senate this evening that we would have people called. I should like to have the IBM president, or a vice-president, summoned to ask if they did not begin earlier than May 19.

Senator Martin: Mr. Chairman, I do not think any such undertaking was given at all by you or anyone.

The Chairman: No.

Senator Martin: These witnesses have made a statement. These are public servants. They are public servants in whom, I am sure, we all have great confidence. They have said that unless these dates were respected it would not be possible to have the June cheques issued in that period. Now, that is the statement made by these public servants, whose word we would accept. Surely it is not fair to them to give the impression that what they are saying does not represent the situation.

That being the case, I think that it is clear that they have established, beyond any peradventure, the situation which they alone are in a position to speak about. They have told us that if the cheques in June are to be issued, the deadline

suggested is the one, the 19th. Surely that is the situation, Mr. Chairman.

Senator Phillips: Mr. Chairman, . . .

Senator Flynn: I rise on a point of order. The comments of the Leader of the Government are totally out of order, interpreting the answers given by the witness. We can do that in the House. He can do that in the house if he wants to.

Senator Martin: I can do it here.

Senator Flynn: We are here to get facts and not to comment upon the answers obtained. At this point, Mr. Chairman, I personally have enough; and the only thing I would like is that I would move that the minutes of this meeting, and what will be done after I have left, be printed or typed in time for the meeting tomorrow at 11 o'clock. I would like to have them before we tackle the report of the committee.

The Chairman: I, of course, have no authority to do this.

Senator Flynn: I do not know if you have authority, but I am asking that. If I do not get it, I will not hold it against you, but I would like to have it. If you do not give them to me, it will not be a disaster. I will hold it against the ways and means of the majority in the Senate. With this, I bid you goodnight.

Senator Phillips: Mr. Chairman—and again I apologize for interrupting the meeting between you and Senator Martin—I am not satisfied with the answer I have received.

The Chairman: Would you put your question again?

Senator Phillips: I ask that the IBM people be called, be heard under oath, as to when those negotiations began. That is my motion.

Senator Thompson: Mr. Chairman, could I ask if Senator Phillips' reason for this motion is because he does not trust the statement of the public servants? You are not satisfied with the statement by the public servants, is that what you are saying?

Senator Phillips: I have had too much interference from Senator Martin to accept anything.

The Chairman: I would like you, Senator Phillips, to address the chair.

Senator Phillips: That is all right.

The Chairman: And if you have a seconder for the motion.

Senator Phillips: I do not need a seconder, in a committee. If you were chairman, you would know that.

The Chairman: You put the motion.

Senator Phillips: I put the motion that we request that the officials of IBM involved in the negotiations referred to by our witnesses appear before us, and appear under oath, and confirm the testimony given to us.

Senator Thompson: I would like to speak on the motion.

Senator Cameron: So would I.

The Chairman: Senator Cameron has asked to speak first. I am sorry, Senator Thompson.

Senator Cameron: Mr. Chairman, I have no objection to the question or the procedure Senator Phillips is suggesting, but I would suggest that this is the first time in sixteen years in the Senate that I have seen a member of a committee attempt to discredit senior public servants. I think there is an imputation here that cannot go unchallenged, that he is seeking to discredit senior officers employed by the Government of Canada. I do not like that sort of situation, and I am prepared to oppose it in every way possible.

Senator Phillips: Mr. Chairman, I am not discrediting any senior civil servants. It is quite normal, quite customary, to ask from an outside witness that they give evidence under oath. If I am wrong, the Law Clerk will tell me I am wrong, and I will be the first to accept that.

The Chairman: I am sure that your proposal is quite in order, Senator Phillips; but some other senators want to speak on the motion, and Senator Thompson is going to speak.

Senator Phillips: Mr. Chairman, on a point of order, is my motion debatable?

The Chairman: I think it is. I put the motion.

Senator Thompson: Mr. Chairman, I asked Senator Phillips why he wanted the IBM officers, is it because he did not think he had the facts from the public servants, and he said that was the case. I, like Senator Cameron, feel that this is an insulting remark to senior public servants who have a record of serving Canada so loyally and with such dedication. I resent the implication or the suggestion he makes concerning their integrity, and I will not support his motion.

Senator Phillips: Mr. Chairman, I am sure you will allow me to reply to an unfair accusation from Senator Thompson. As much as I admire the gentleman, he has misinterpreted my remarks. I said I wanted, not the civil servants under oath—I did not ask that—I asked the IBM . . .

The Chairman: Your motion was quite clear. It has been put, and now we have to vote on it.

Senator Langlois: Mr. Chairman, how can we vote on a motion to call a witness and we do not know his name? If we call all the IBM people here, we will have quite a crowd.

Senator Phillips: Well, call them.

The Chairman: I think we can vote on the principle of it.

Senator Langlois: I suggest that the motion is out of order. It is too general in its terms. Is it to call the president of IBM, or the general manager in Canada or in the United States?

The Chairman: He said the man who was dealing with this.

Senator Phillips: I am sure the witnesses know whom they negotiated with.

The Chairman: I think we are ready for the question and I would like to have a vote on it—at least on the principle of it. Then, if the motion carries, I am sure we will be able to find a name.

Those for the motion?

Those against the motion?

Motion defeated.

Senator Martin: Mr. Chairman, may we go to the bill now?

Senator Phillips: I have one further question, Mr. Chairman. I am a bit confused on the fact that Senator Martin knows so much about the mailout. It is rather unusual for someone in his position to know exactly the date of the mailout, the number and what is to be included.

Therefore, Mr. Chairman, I think it is only fair that we should all have the benefit of having seen the mailout. I would not say I would want the wisdom of Senator Martin, but I would like the benefit of seeing the mailout, what is in it, and the cost to the taxpayer, who designed the mailout, and who took the final responsibility; in other words, who is responsible for the mailout. Can I have that, please?

Dr. Willard: Well, Mr. Chairman, the minister is the executive head of the department. He has the responsibility for anything that is issued. As to the statement or material that will appear in the press that we are trying to get out by the 28th of this month, which gives us about ten days from today, we were working on that as late as this afternoon so it would be available for the minister who had to leave for Hamilton this evening. I think he will get an opportunity to look at that material tomorrow. He hopes that there will be approval at that time.

With regard to the cheque inserts perhaps Mr. Bergevin could make some comment on that.

Mr. Bergevin: The text of the mailout is definitely not ready. It is in the form of a handwritten paper because we do not have some essential details. We are working on it now.

Of course, the text for the insert in June will follow the special mailout by two or three days. We cannot work on all of them at the same time. But the text, the final draft or final mailout has to be Monday and the other one Wednesday. We cannot work on the two of them together. The insert will complete, if you like, some aspects of the mailout—you know, some details that we give in the mailout.

Senator Martin: The insert will contain what information?

Mr. Bergevin: Again, we do not have the final text of the June insert. Is that what you have asked? The June insert or the mailout?

Senator Martin: No, the insert.

Mr. Bergevin: The June insert will contain the table that Dr. Willard referred to previously on the various rates for the OAS, how the cheques are made up and what their

normal cheque will be thereafter. It is going to be part of the insert.

Senator Thompson: Does the mailout go to individual pensioner?

Mr. Bergevin: That is right, around June 15, if this schedule is kept.

Dr. Willard: A question was asked about costs, Mr. Chairman. We have our preliminary estimates. These are not firm, but this is what it looks like. The information notice to all pensioners will cost about \$200,000. The kits that will have to go out to non-GIS pensioners and to others will go out in July; that is, the kits for those 100,000 people who are not now getting GIS but who will move up into that category. That will cost about \$210,000. The advertising may be of the order of \$128,000. All told, it looks as though the administrative costs for the fiscal year 1972-73, will run, all told, about \$1,165,000 compared with the present expenditures that are running about \$9,311,000. So this year added expenditures will be heavier. Next year they will drop back to about \$173,000.

Senator Martin: Mr. Chairman, I have a series of questions I would like to ask that do not arise specifically out of any of the clauses of the bill. May I address myself to that now?

The Chairman: Yes, unless Senator Phillips has more questions on this particular aspect.

Senator Phillips: Yes, I have one particular question. I am not sure if I understand the witness correctly when he says he must have it by May 23. Did I understand you to say that, sir?

Mr. Bergevin: No, sir. I said the 22nd, Monday morning.

Senator Phillips: Why Monday morning?

Mr. Bergevin: Because I do not have the text now. I have to talk to my superior and find out what it is going to be like. I have to have the last figure, the one in the legislation.

Senator Martin: You cannot put it in until the legislation is law, in other words.

Mr. Bergevin: Really.

Senator Phillips: But is it not unusual for you to be put in this situation whereby you must have something completed by a certain date? As a senior civil servant you have, I assume, gone through this type of procedure before. Is it unusual for you to be given a specific date?

Mr. Bergevin: My answer to that, sir, is very simple. I was asked by my minister and deputy minister a question: "How soon can we get these cheques out?" We sat down with our partner, the Department of Supply and Services, and we prepared the schedule which Mr. Yeomans gave you a few moments ago. This is how we can go step by step. We went back and we said that May 19 would be our date in order to be able to come up with the goods. That is

all. That is how we did it, sir. I have been a civil servant for 30 years.

Senator Phillips: I fully respect your position as a civil servant, sir. But there was no specific direction given to you as to why it had to be that date, or why it could not have been two weeks later or a month later?

Mr. Bergevin: No, sir.

Senator Phillips: Because it is retroactive to January 1.

Mr. Bergevin: I was not given any date, sir. I was asked, "When can you get those cheques out?" And that was our answer—May 19.

Senator Phillips: But no explanation was ever given to you as to why you could not have done the same thing in March?

The Chairman: Well, I think that is beyond the responsibility of the witness at this time. Evidently it is a political decision. A political decision, in so far as the House of Commons is concerned, has been taken unanimously by the house, and I do not think that the witness has really to answer that question. What he has been asked was what date was necessary in order to get the cheques out for June 1.

Senator Phillips: You do not have to lecture me on that position.

The Chairman: I am not lecturing you.

Senator Phillips: I know just as well as you how it works.

The Chairman: I have too great respect for you to lecture you.

Senator Langlois: This was asked on May 9, was it?

Mr. Bergevin: Sure, after the budget.

Senator Martin: And that was the first intimation you had?

Mr. Bergevin: Yes.

Senator Martin: Do you know of any other way by which you could accelerate the procedure?

Mr. Bergevin: We were not given any intimation of what date we should come up with. We went through the mechanical means described by Mr. Yeomans. If we do not have the legislation by May 19 we cannot meet the deadline.

Senator Martin: That is your final decision?

Mr. Bergevin: Yes.

Senator Carter: Mr. Chairman, I have some general questions on the legislation which have nothing to do with this particular aspect. May I proceed?

The Chairman: Do you have any other questions on the time element, Senator Phillips?

Senator Phillips: If I may, I will just ask one more, and we can finish the time aspect and be through with it, Mr. Chairman.

After the motion in the other place, which I referred to in my remarks this evening, was there any directive that went to the witnesses to prepare a date? Or were any questionnaires sent round in that seven-week period between that Conservative motion in the House of Commons, to which I referred, and the budget? As public servants did you receive any directives asking you to give a date on which the cheques would be mailed out? cheques would be mailed out?

The Chairman: First of all, I am quite sure that our witnesses are free to answer that question if they wish. But I must warn you that this is a privileged question dealing with the relationship between a minister and civil servants.

Senator Phillips: May I just ask the witnesses whether they would answer the question which you have ruled as a privileged question?

The Chairman: If they wish to answer the question they are free to do so within that limitation.

Senator Phillips: Yes, I accept that Mr. Chairman.

Dr. Willard: Mr. Chairman, I am not sure what the question is exactly. I would like to have it framed again.

Senator Phillips: On a date previous to the budget perhaps seven weeks previous, there was a motion in the House of Commons by the official Opposition to produce a result somewhat similar to what you have indicated. I will not go into any partisanship here. I think it is better that way. However, did you receive any instructions after that to begin preparing a program of this nature?

The Chairman: As a result of the motion produced by the Opposition?

Senator Phillips: I did not say that, Mr. Chairman.

Senator Langlois: Perhaps as a consequence.

Senator Phillips: It may have been a consequence or it may have been a coincidence.

The Chairman: I am just trying to help you phrase your question—perhaps in French, if you wish.

Senator Phillips: And I am endeavouring to co-operate with you by saying it could be a coincidence or a consequence. Is that fair enough?

The Chairman: Yes.

Dr. Willard: Mr. Chairman, there was no relationship between that particular motion which has been referred to in the house and what came out in the Minister of Finance budget. Over the past year or so we have from time to time prepared various cost estimates for different programs for the minister. It is normal for our research division to do this on a regular basis. The minister has these cost estimates. However, what the Department of Finance did, or what the Minister of Finance did in his budget was a matter between himself and his colleagues.

The Chairman: Do you have any further questions Senator Phillips?

Senator Phillips: Mr. Chairman, I just wish to make one comment after that last reply. I would suggest that the witness become a member of the cabinet. You can now pass on to Senator Martin.

The Chairman: I do not feel your remark is in order, but it is on the record, in any event.

Senator Martin: Senator Grosart suggested today that the comparison of cash benefits in Canada with other countries would have been useful information. I feel this is a good place to put this information on the record. Do you have the maximum benefit figures available for Australia for a single person and for a couple?

Dr. Willard: Mr. Chairman, it is difficult to make international comparisons at any time because they relate to the standard of living and so forth in any given country. The only comparisons which we have at this time are those made by our research division and they used the exchange rates as they now exist. The maximum for a single person in Australia is \$981 compared with the maximum of \$1,800 for OAS-GIS in Canada, and for a married couple the maximum is \$1,854 in Australia compared with our maximum of \$3,420.

Senator Martin: How about Denmark?

Dr. Willard: Again using the exchange rate basis of comparison, for a single individual the figure is \$1,245 and for a couple it is \$1,868. Denmark also has a supplement of \$272.

Senator Martin: And for The Netherlands?

Dr. Willard: For a single person in The Netherlands the amount is \$1,405 and for a married couple it is \$1,992.

Senator Martin: For New Zealand?

Dr. Willard: In New Zealand they have a superannuation in the amount of \$910 for a single person and \$1,665 for a couple. In addition to that there is the old age pension which goes up to \$910 for a single person and \$1,665 for a couple.

Senator Benidickson: Dr. Willard, you use the term "couple", do you mean a married couple both of whom are eligible for pension?

Dr. Willard: Yes, both of whom are pensioners.

Senator Martin: How about Sweden?

Dr. Willard: For a single person in Sweden the amount is \$1,200 and for a couple it is \$1,867. There is a supplementary old age pension as well for employees and the self-employed. In Canada, since we have not included the Canada or Quebec Pension Plan for retired benefits, we could leave that figure out. In the case of Sweden, it is \$1,200 compared to the \$1,800 in Canada for a single person and \$1,867 compared to \$3,420 for a married couple.

Senator Martin: For the United Kingdom?

Dr. Willard: For a single person in the United Kingdom the amount is \$673 with a possible supplementary pension of \$700. For a married couple it is \$1,091 with a supplementary pension of \$1,145.

Senator Martin: And for the United States?

Dr. Willard: The United States is a little easier to compare because our exchange rates are a closer reflection of the relative standards of living. Under their old-age and survival insurance program they have a minimum that provides \$760 for a single person while for a married couple it is \$1,140 and the average payment under that program is \$1,649 for a single person and \$2,428 for a couple.

Senator Martin: These figures are all in Canadian dollars, are they not?

Dr. Willard: Yes.

Senator Martin: You have provided us with the annual cash benefits for the aged in these selected countries. What we are proposing in Canada is \$1,800 OAS-GIS for a single person and \$3,420 OAS-GIS for a couple.

Dr. Willard: That is correct.

Senator Martin: On the basis of these comparative figures, the rates in Canada are higher than in any of these other countries.

Dr. Willard: Yes, using the current exchange rates as a basis.

Senator Martin: If this legislation is passed, single persons as well as couples will be receiving higher amounts in comparison to these other countries.

Dr. Willard: That is correct.

Senator Thompson: There has been a statement in the Senate by Senator Grosart. I would like to ask Dr. Willard if this is correct. Is it true that if the cost of living had been the escalating factor from the time the basic pension was \$75 until now, that that figure of \$90.53 would be the basic pension today?

Dr. Willard: Yes, that is correct, sir.

Senator Thompson: And that would cost the treasury 18 million. Am I correct in that?

Mr. Bergevin: The figure would be \$200 million if they get about \$10 more than they would get in the base. It would cost from \$180 million to \$200 million.

Senator Thompson: I do not want to misquote Senator Grosart.

The Chairman: Does this represent your view, Senator Grosart?

Senator Grosart: It does not represent my view and it does not represent what I said. That is a very simple way of putting it but if you multiply 18 by 12 you will get close to a total figure. The \$18 million is the one-year-cost-of-living increase cost.

Dr. Willard: Mr. Chairman, I have the figures now. The cost of living between January 1967 and January 1972 rose by 20.7 per cent. This would have meant an increase in the Old Age Security pension to \$90.53. Such a rate of benefit would have cost \$228 million more than at present or \$166 million more than is now proposed.

The Chairman: Does this correspond to your estimates?

Senator Grosart: I said it would cost \$18 million more for the annual cost-of-living increase.

Senator Carter: The new ceilings have risen now from \$135 for a single person to \$285 for a couple, both pensioners. It means that there are some people eligible under this legislation who were not eligible at the beginning of the year.

Dr. Willard: That is correct. We estimate it will be about 100,000.

Senator Carter: You have to go back and recalculate all these claims. What is the position where there is a couple and one of them dies during the month? Is the amount payable to the deceased? Is that paid to the widow, or is that recovered? What happens?

Mr. J. A. Blais, Assistant Deputy Minister, (Income Security), Department of National Health and Welfare: On the death of a pensioner, the payment to that pensioner for the month of death is payable to the estate, irrespective of the date on which death took place.

Senator Carter: What is the mechanism for doing that? Does the cheque have to be returned?

Mr. Blais: Not necessarily. If the cheque is endorsed by the executor of the will, if there is a will, or by the person who is looking after the affairs of the pensioner, it ceases after that.

Senator Carter: The legislation mentions adjustments in the consumer price index. I have been trying to figure out what that means. If the consumer price index is adjusted, say, upwards—because if it is adjusted downwards there is no change—if it was adjusted upwards in June, halfway through the year, does that apply retroactively or only at the date when the adjustment is calculated?

Mr. Blais: The adjustment every year takes place on April 1, at the time the program is renewed. All pensioners have to re-apply once a year for the renewal of the guaranteed income supplement. The adjustment takes place, as I said, on April 1, but it is based on the consumer price index up to September 30 of the year previous. That is to allow us time to print booklets at the new rates and have them in the hands of the public for renewal time in January or February, at which time T4 slips are issued as to income; and it takes us about four months to process applications upon receipt.

Senator Carter: I understand that. I do not think I phrased my question quite as I intended. What I was talking about is not the adjustment in the cost of living index that we are using. It speaks here about an adjustment in the base of the cost. In other words, you are going

to develop a different method of determining the cost of living index, as I understand it—in the base of the index, not just the necessary adjustment in the one that we are using.

Dr. Willard: Senator Carter is probably referring to clause 6. If that is the clause he is referring to, that is to take care of the situation when Statistics Canada changes from time to time its consumer price index. If they change the basket of goods every so often, they have to revise the index. This clause is to make sure that our legislation will be adapted to the new index that might be adjusted to reflect a new time base or a new content basis.

Senator Carter: But there is nothing in this legislation to say that Statistics Canada will only make this new calculation with a new basket on April 1. They may do it some time other than April 1, so that you may have some cheques issued on the old basis. When the new one comes into effect, what happens then? Do you use the new one retroactively or do you just continue on?

Dr. Willard: I think, Mr. Chairman, the practice has been that when they come in with a new index they try to give some indication as to how it might reach back into the past. It will be that kind of problem that we will have to face at the time. Whether or not they carry along the old basket of goods a little bit into the future, or whether the new one will reach back, there will be this problem of trying to adjust to a new index of consumer prices. The only point of putting this in the legislation is to say that when this occurs we will go along, at it were, with the new base and with the new index.

Senator Carter: One last question: What would be the position of a couple, both pensioners, one of whom dies and leaves a life insurance policy of, say, \$5,000 so that the surviving pensioner would have \$5,000 in the bank. Would that interfere with the calculation?

Dr. Willard: The only thing that counts is the interest on it. In applying the income test under this type of program we are really talking, as it were, about the flow of income. In other words, we are not talking about the assets but the interest that comes from them.

Senator Carter: So that a person could have any amount of money in the bank and continue to draw some guaranteed income supplement as long as he is not disqualified by the amount of interest.

Dr. Willard: The interest is used as the income in order to determine how much of a guaranteed income supplement will be received. The asset itself is not considered.

Senator Carter: Have you calculated now how much extra income a person can have before becoming disqualified?

Dr. Willard: Yes, I have it here. Under the proposed plan the cut-off income level for a single person will be \$1,632.00; for a couple, \$2,880.00 each; and for a married pensioner, \$4,258.56, that is exclusive of old age security, of course, which has to be added.

Senator Carter: Yes.

Senator Thompson: Mr. Chairman, assuming that we, the government, had made a contract with the old age pensioner when he got the basic \$75 and because of that contract we are going to see that he gets the increase in the cost of living and that is why we have this raise, we would have to admit that we are \$8 short on the amount we should be giving the old age pensioner. Am I correct in that?

Senator Phillips: No, you are a dollar a month short.

The Chairman: First of all, there was no contract.

Senator Thompson: No, but I say if we assume we had a contract.

Dr. Willard: Could you repeat that, please?

Senator Thompson: If we assume that we made a contract with the old age pensioner when we first established the \$75 and we are now saying that, having had that contract, the cost of living has escalated and, therefore, we are increasing the pension to be equivalent to the cost of living in order to keep the contract, we would have to admit that this raise we are giving is about \$8 short of keeping the original contract. Am I correct in that?

Dr. Willard: Well, yes if you make the assumption that it is a contract, but you may look at it that Parliament from time to time improves the legislation over the years and that this is one improvement such as the other improvements in rates. We started in 1952 at \$40 a month, and we went up to \$46, \$55, \$65, \$75, \$76.50 with the escalator, \$78, \$79.58 and then to \$80. We are now going to \$82.88. It also depends on whether you consider the basic pension sufficient in the kind of contract you suggest, so I think it is difficult to put it in that context.

The Chairman: The whole purpose was to create a fund. It is not a contractual arrangement, as you, I am sure, realize at the basis of this. There was a fund to which everyone was supposed to contribute and, as with the unemployment insurance fund, you never know when you will draw from it.

Senator Phillips: Mr. Chairman, if you will pardon me for interrupting, I should just like to say your explanations are far better than those of Senator Martin, and considering you are a neutral chairman . . .

Senator Martin: I agree.

Senator Phillips: . . . I appreciate the fact you went into such detail to explain.

Senator Martin: I agree on that one.

The Chairman: I was an expert witness before the joint committee of the House of Commons and the Senate when the old age pension scheme was being discussed.

Senator Phillips: When you convince me you are an expert, that is fine. I did ask for the floor.

The Chairman: Yes.

Senator Phillips: I have been bypassed every time.

The Chairman: You have had your opportunities.

Senator Phillips: I have had my fair share, I will admit, but, after all, I did ask in the chamber this evening if someone on the government side would speak to this, and there was not one of you who wanted to speak, so I presumed the same attitude prevailed here in the committee.

The Chairman: You can ask all the questions you want.

Senator Phillips: I presumed there was no one on the government side who wanted to ask any questions because no one in the chamber seemed to want to.

I was intrigued by the fact that Senator Martin came out with a long list of countries and the different benefits that were paid in each country. Of course, he has the benefit of an executive staff and the cooperation of the minister and the officials of the department in preparing his questions. I was wondering Mr. Chairman, if anyone had taken the time to take into account and make a comparison between the wages, the cost of living, the contributions and the benefits received in all those—well, I think Senator Martin listed every country except Biafra and Bangladesh.

The Chairman: And the tax rates.

Senator Phillips: And the tax rates. As an economist you know that can be most misleading, but probably you do not. I wonder if anyone has made a comparison in that regard.

Dr. Willard: Mr. Chairman, as I mentioned earlier, we have not gone into the international comparisons to study them in this detail. The type of figures that I have indicated have the limitation I have mentioned. Ideally, if you are making a study of the relative, shall we say, merits of different plans, you would have to take into account not only those factors but other programs such as, for instance, in Canada we have hospital insurance care provided to the old people whereas in the United States they do not.

Senator Phillips: I disagree with you there, sir; they do have medical care in the United States.

Dr. Willard: Yes, they do for the aged; that is correct.

Senator Phillips: The record is now corrected in that regard.

Dr. Willard: If we were to compare Canada which does not have coverage for drugs for old age pensioners with a country that does that would have to be taken into account. In other words, you have to take into account the various other schemes provided. I did not take into account in the Canadian scheme the situation with regard to the Canada and the Quebec pension plans, and as time goes on these will be important factors.

Senator Martin: In 1976.

Senator Phillips: In other words, you made your comparison, I presume, at the request of someone, other than myself, who had taken an entirely different interpretation. Someone senior to you in the department wanted to present a favourable picture to the public.

Dr. Willard: Mr. Chairman, I think that is a bit unfair.

The Chairman: Yes, it certainly is.

Dr. Willard: If the senator would care to look at the testimony in the parliamentary committee on Old Age Security in 1950 he will see that I gave testimony on these things and indicated the difficulties involved in international comparisons. At that time we used exchange rates as a ready rule-of-thumb. Because Canada is doing quite well in this area we should not complain. But you can only use this comparison as a general guide. I think some of these factors that the honourable senator has mentioned, if you are doing a thorough study on this, should be taken into account.

The Chairman: I would like to say, Senator Phillips, that Dr. Willard has been a very devoted civil servant.

Senator Phillips: And I have not criticized him in that regard.

The Chairman: I think that you have implied criticisms, and as chairman I think I must say that I have known him for over 25 years working in that department, and being a very great dedicated Canadian.

Some hon. Senators: Hear, hear.

Senator Phillips: I take nothing away from Dr. Willard, but I find it extremely interesting that in reply to Senator Martin he has a great many beneficial figures to give, but when I ask a question he says in 1950 . . .

The Chairman: All your questions were quite different.

Senator Phillips: In making comparisons.

The Chairman: For instance, if you start to compare countries, as you have tried to do . . .

Senator Phillips: I did not try to do it. It was Senator Martin who was trying to do it.

The Chairman: Senator Martin asked very direct questions about the differential and comparisons between social security benefits. However, if you also get into tax differentials you will see that in Switzerland they pay 22 per cent on their corporate income tax. This has to be taken into account if you want to have a complete comparison between two different countries. This was the purpose of your question.

Senator Phillips: The purpose of my question was to counteract the line of questioning by Senator Martin.

The Chairman: It was quite unfair to the witness. You cannot expect the witness to have these kinds of figures to make comparisons tonight.

Senator Fergusson: Mr. Chairman, I think we have had quite enough discussion on this, and enough irrelevant and unnecessary questions from Senator Phillips. I too resent very much the criticism of the public servants we have before us, particularly Dr. Willard, whom I have known and worked with for many years, and for whom I have the greatest respect. I know that he would certainly mislead no one.

Some hon. Senators: Hear, hear.

Senator Fergusson: I think we have had quite enough of this, and I ask if we cannot now take the bill clause by clause.

Senator Phillips: I am quite willing to take the bill clause by clause, Mr. Chairman. I think Senator Fergusson has unfairly interpreted my question. That is her privilege.

Senator Fergusson: It is not "question"; it is "questions". You have been doing it all evening.

Senator Phillips: All right, then, since Senator Fergusson has ruled that it is not my privilege to ask questions, it is also my privilege not to give consent.

Senator Fergusson: I cannot rule on anything. It is the chairman who rules here. I just express myself like anybody else.

The Chairman: You are the second to go, Senator Phillips.

Senator Phillips: And I will be the first one there in the morning.

The Chairman: Honourable senators, shall we take the bill clause by clause now

Hon. Senators: Agreed.

The Chairman: Shall clause 1 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 2 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 3 carry?

Senator Martin: This is the clause that establishes the basic amount.

The Chairman: If any honourable senator has any questions to ask on any clause he or she is, of course, quite free to raise them as we go along.

Senator Carter: I have a question on the recommendation opposite, the last three or four lines.

The Chairman: Is that on clause 3?

Senator Carter: I do not know which clause it is. It is the recommendation, the last three or four lines. I suppose it means that you pay the three months retroactive in one cheque. Is that what that means?

Senator Forsey: Is that the recommendation of the Governor General?

Senator Carter: Yes. I am wondering what it means.

Senator Martin: That is the recommendation to proceed.

Dr. Willard: It is covered in clause 7, and perhaps we could deal with that when we get to clause 7.

The Chairman: Is that all right?

Senator Carter: Yes.

The Chairman: Shall clause 3 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 4 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 5 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 6 carry?

Senator Martin: This is the clause that repeats the protection in the Canada Pension Plan, dealing with the index?

Dr. Willard: Yes. Where the basis of the consumer price index is changed this is to ensure it is provided for in this legislation.

The Chairman: Shall clause 6 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 7 carry?

Dr. Willard: Mr. Chairman, Senator Carter was asking about clause 7. This clause recognizes that some people who were not entitled to a guaranteed income supplement for January to March, 1972, under the old ceilings may now become eligible under the new ceilings. Rather than require them to submit their 1970 income statements to cover that three-month period and their 1971 income statements for the subsequent 12 months, they are authorized to submit the 1971 statement for the determination of the April, 1972, benefit, and to have this amount used as their benefit for the first three months in that year as well. In other words, they can use their 1971 income instead of their 1970 income for those three months. This will simplify it for them.

Senator Carter: Thank you.

The Chairman: Shall clause 7 carry?

Hon. Senators: Carried.

The Chairman: Shall the bill carry?

Senator Thompson: Mr. Chairman, could I just ask one question? I do not know what it comes under. I am thinking of the reciprocity agreement. As I understand it, you have a reciprocity agreement with several countries concerning pensions. Do you have one with Germany? If so, how would that affect this pension?

Dr. Willard: Yes, we have entered into an agreement with West Germany, and that agreement is very much in our favour. It has not required us to change any of our Canadian legislation, and this legislation will not in any way affect it. What that agreement has really done, is to take care of the difficulty where, under the German legislation, they cannot pay pensions to West Germans who come to Canada unless they remain as German citizens. The only way in which that rule can be waived, if they become Canadian citizens, is through having a reciprocal agreement with the country concerned—in this case, Canada;

and under these circumstances, then, they can pay pensions from the German pension plans to which the Germans who have come to Canada have contributed and built up credits, they can pay pensions to them even when they become Canadian citizens.

Senator Thompson: In other words, it is portable?

Dr. Willard: Yes, they have made their pensions portable. They are satisfied with the portability of pensions which we have under the Canada Pension Plan, which is completely portable; and under the old age security provisions, which have certain residence requirements concerning portability. The change in the residence rule here makes it a little more liberal than it is now and, therefore, Germany will not have any objection to it.

Senator Thompson: Is there any other country with which we have an agreement?

Dr. Willard: Yes, we had an exchange of letters with the United Kingdom government and there again they considered our legislation to be satisfactory; but in order to make changes in their legislation whereby they could provide more favourable treatment under their legislation, they wanted to have this exchange of letters; so, again, it was not necessary to make any changes in our legislation.

Senator Carter: Could I ask a supplementary on that? A West German national who reaches 65 years of age and has become a Canadian citizen can get her West German or German pension as well as this, as well as this one here, as well as the old age pension?

Dr. Willard: That is correct, yes, provided of course they meet the residence requirement under this bill.

Senator Carter: Yes; but that counts as income for the guaranteed supplement?

Mr. Blais: Mr. Chairman and honourable senators, any foreign pension earned or contributed to in a foreign country is considered as income in terms of our legislation here in Canada. There are some exceptions. For example, anybody who has suffered under the Nazi regime during the war and who was given a pension in terms of compensation for the suffering that he underwent, that kind of pension under the income tax law is not considered income for taxable purposes.

Dr. Willard: Mr. Chairman, the rule to follow is that whatever is done with respect to income under income tax applies with regard to the income supplement, because we use it as the basis for the income test.

The Chairman: I have a vested interest in Mexico. Do we have any arrangement with Mexico?

Dr. Willard: Mr. Chairman, we have no arrangement with Mexico.

The Chairman: So my daughter will not qualify. Shall the bill carry?

Hon. Senators: Agreed.

The Chairman: Carried.

Senator Carter: I move that we report the bill without amendment.

The Chairman: Shall I report the bill without amendment?

Hon. Senators: Agreed.

The Chairman: Agreed.

Senator Martin: There was one point raised by Senator Flynn about the evidence, that we be able to have type-written copies of it.

The Chairman: I hope that the staff will be able to make this available for our meeting at 11 o'clock tomorrow morning.

The committee adjourned.

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FOURTH SESSION—TWENTY-EIGHTH PARLIAMENT

1971-1972

THE SENATE OF CANADA

PROCEEDINGS OF THE STANDING SENATE COMMITTEE ON **HEALTH, WELFARE AND SCIENCE**

The Honourable C. W. CARTER, *Acting Chairman*

Issue No. 2

THURSDAY, JUNE 29, 1972

Complete Proceedings on Bill C-195,
“An Act to amend the Adult Occupational Training Act”.

REPORT OF THE COMMITTEE

(Witness and Appendix—See Minutes of Proceedings)

THE SENATE COMMITTEE ON HEALTH,
WELFARE AND SCIENCE

Chairman: The Honourable Maurice Lamontagne

The Honourable Senators:

Bélisle	Hastings
Blois	Hays
Bonnell	Inman
Bourget	Kinnear
Cameron	Lamontagne
Carter	Macdonald
Connolly (<i>Halifax North</i>)	McGrand
Croll	Michaud
Denis	Phillips
Fergusson	Quart
Fournier (<i>de Lanaudière</i>)	Smith
Fournier (<i>Madawaska- Restigouche</i>)	Sullivan
	Thompson
	Yuzyk—(26)

Ex officio Members: Flynn and Martin

(Quorum 7)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate,
Wednesday, June 28, 1972:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Norrie, seconded by the Honourable Senator Kinnear, for the second reading of the Bill C-195, intituled: "An Act to amend the Adult Occupational Training Act".

After debate, and

The question being put on the motion, it was
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Norrie moved, seconded by the Honourable Senator Kinnear, that the Bill be referred to the Standing Senate Committee on Health, Welfare and Science.

The question being put on the motion, it was—
Resolved in the affirmative."

ROBERT FORTIER,
Clerk of the Senate.

Minutes of Proceedings

Thursday, June 29, 1972.

(2)

Pursuant to adjournment and notice the Standing Senate Committee on Health, Welfare and Science met this day at 9.32 a.m.

Present: The Honourable Senators Bonnell, Bourget, Cameron, Carter, Fergusson, Inman, Kinnear, Macdonald, Quart, Smith and Yzyk. (11)

Present but not of the Committee: The Honourable Senator Norrie.

On Motion duly put, the Honourable Senator Carter was elected Acting Chairman.

On Motion of the Honourable Senator Fergusson, it was Resolved to print 800 copies in English and 300 copies in French of these proceedings.

The Committee proceeded to the consideration of Bill C-195, "An Act to amend the Adult Occupational Training Act".

The following witness was heard in explanation of the Bill:

Department of Manpower and Immigration:

Mr. John Meyer,
Acting Director,
Manpower Training Branch.

On Motion duly put, it was Resolved to report the said Bill without amendment.

The Committee requested the witness to supply additional information respecting training under the *Adult Occupational Training Act*. (*Note:* Statistical tables containing this information are printed as an Appendix to these proceedings.)

At 10.30 a.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Patrick J. Savoie,
Clerk of the Committee.

Report of the Committee

Thursday, June 29, 1972.

The Standing Senate Committee on Health, Welfare and Science to which was referred Bill C-195, intituled: "An Act to amend the Adult Occupational Training Act", has in obedience to the order of reference of June 28, 1972, examined the said Bill and now reports the same without amendment.

Respectfully submitted.

C.W. Carter,
Acting Chairman.

The Standing Senate Committee on Health, Welfare and Science

Evidence

Ottawa, Thursday, June 29, 1972

The Standing Senate Committee on Health, Welfare and Science, to which was referred Bill C-195, to amend the Adult Occupational Training Act, met this day at 9.32 a.m. to give consideration to the bill.

Senator Chesley W. Carter (*Acting Chairman*) in the Chair.

The Acting Chairman: Honourable senators, I thank you for according me the honour of presiding over this meeting. I know that time is very scarce and that we want to progress as quickly as we can.

We have with us Mr. John Meyer, the Acting Director of the Manpower Training Branch, Department of Manpower and Immigration. How do you wish to proceed? Do you wish to have a general discussion and then deal with the clauses afterwards?

Hon. Senators: Agreed.

The Acting Chairman: Mr. Meyer, do you wish to make an opening statement?

Mr. H. J. Meyer, Acting Director, Manpower Training Branch, Department of Manpower and Immigration: I was not briefed to do that. Perhaps it would be easier for me to respond to any questions senators may have on the bill.

Senator Smith: Perhaps I might make a suggestion. In the Senate we had what I thought was a very clear exposition on of the contents of the bill, followed by several important speeches of a critical nature—and I use that word in its best sense. Those who made suggestions in the Senate itself are present here this morning, and it might serve our purpose if they put their questions to the witness, in case he has not been briefed on them.

The Acting Chairman: Is that agreed, honourable senators?

Hon. Senators: Agreed.

Senator Macdonald: Can the witness tell us how many are on these courses at the present time?

Mr. Meyer: I would imagine that at this point in time we would have something in the order of 60,000 trainees.

Senator Macdonald: That is under the present system, whereby they had to be in the labour force for three years?

Mr. Meyer: Yes.

Senator Macdonald: Under this bill that no longer applies. Have you any forecast on how many more will be coming in, and whether you will be able to accommodate them in courses?

Mr. Meyer: At the present an average of slightly less than 60 per cent do not receive allowances, so these people will now be eligible for allowances. Apart from that, what it really boils down to is that we have a broader mandate but not more money. If anything, I suppose the selection process will become a little more difficult.

Senator Inman: Are elderly, retired people drawing fairly good pensions allowed to enter a training scheme?

Mr. Meyer: In principle, yes, though I would imagine the circumstances would need to be rather unusual.

Senator Inman: They are not unusual in our province.

Senator Macdonald: I think what the witness means is that the plan is to help employment.

Senator Inman: I am thinking of, say, a bank manager taking training.

Senator Macdonald: You mean, after he has retired from the bank.

Mr. Meyer: The circumstances would need to be rather unusual, in that the training is intended to prepare or better equip people for employment. I presume that retired people are expected to have retired from the labour force.

Senator Inman: Is there some sort of screening carried out?

Mr. Meyer: Yes, in the sense that manpower counsellors in the Canada Manpower Centres must determine whether the intent of the bill is being met by placing into such training the individual who seeks such placement. The intention of the bill is, as I explained, to prepare people for more rewarding or more remunerative employment.

Senator Yuzyk: How do you follow up after a trainee has completed his course, regarding his employment?

Mr. Meyer: There are two types of follow up. One is the perhaps somewhat informal one, where the Manpower counsellor initially responsible for placement of the individual in training will follow him up, keep his files active, so to speak, keep an eye on the release date, the date the trainee is expected to become available, and, if

2 : 7

possible, have some employment opportunities lined up to which the trainee may be referred.

Senator Yuzyk: How long does he keep such a trainee on his files? About a year?

Mr. Meyer: Yes, it varies from six months to a year, depending on the kind of skills involved. It would be between six and twelve months. The other type of follow up that we conduct is a broader one. It is really a qualitative analysis of the effect of the program in a broad sense. This would be conducted by the program development service of our department, through a direct-mailing type of follow up.

Senator Yuzyk: About what percentage of trainees are able to secure employment upon completion of the course?

Mr. Meyer: Our latest figures on this are about two years old at the moment, because of the process I have just described, that of getting the information; but at that time about two-thirds of the trainees secured employment in line with the training.

Senator Yuzyk: It has been charged that there are many trainees who complete certain courses and who, upon completion of such courses, are really not suited for a job in that particular locality. What happens to such trainees? This was a particular area in New Brunswick, where there was a task force and it studied the situation. The claim was that many of those who received training could not find a job for the training they received.

Mr. Meyer: Of course, I believe this was at a time when many other people could not find a job either. Unfortunately, at a time of relatively high unemployment, when these are being trained, the jobs for which they are being trained should be readily available. In the department we attempt some job projections, extending over a period of four to five years, on the basis of which we place people in training, or refer them for training, in the hope that these projections will prove to be valid and that the jobs will be available, if not immediately upon completion of training then perhaps half a year or a year later, when the economy picks up.

Senator Inman: Could they change to another course while they are waiting?

Senator Yuzyk: Does the act not specify that you can take only one year? Is it one year of training?

Mr. Meyer: No. The course may be of only 52 weeks' duration, but the act is not specific on the number of courses that an individual may take in succession. So it would be possible to refer the trainee to another course if, in the meantime, for instance, a change in the employment situation had taken place which would lead him to believe that perhaps an earlier and better opportunity will arise in that area of training. However, on the other hand, things may not have changed very much and we may find ourselves in the situation that training in another skill is not going to do much more, perhaps, in certain circumstances than denying somebody else a job.

Senator Inman: Would you allow people to take courses, knowing full well that there would not be employment for them in that type of training?

Mr. Meyer: I would not say that this never occurs, but it certainly is not policy.

Senator Bourget: Have you statistics showing the number of people who took that course and eventually got a job?

Mr. Meyer: Yes, we have a whole book of statistics of this nature, and we would be glad to submit it to the committee.

The Acting Chairman: Could you provide it?

Senator Smith: You do not have information like that this morning?

Mr. Meyer: No.

Senator Smith: You expect us to get the bill through before Friday, do you? It is our practice to have that kind of information, so that our members will permit third reading of a bill. This is vital information. It is a question on my mind and, I am sure, on everyone's mind here today.

Senator Bourget: There has been so much criticism on this, that figures will show exactly what success these programs have had, in relation to the amount of money spent; and I think it is very important that members of the committee and members of the Senate should get those figures.

Mr. Meyer: I appreciate that, senator.

The Acting Chairman: How soon can you make them available?

Mr. Meyer: If I could have time to make a phone call, I could get them here in a couple of minutes.

Senator Smith: As a compromise on the situation, it might be to our satisfaction if this information could be submitted to the one who will be opening the debate on third reading, and then it could be presented to the house. It would then be a matter for individual senators to decide whether this is satisfactory or not. There are other meetings going on today, and it might be a little difficult to wait for the information. I do not know in what form it is, but my own guess is that it is in a rather involved state, a state in which it is a little difficult to draw deductions.

Senator Fergusson: Because New Brunswick has been spoken of, I would like to make a comment. I am very well aware of the task force in New Brunswick. The people on it are great friends of mine, and I have great respect for what they say. The Poverty Committee found many of the same things in different parts of the country. I would like to say that this year I spoke at the closing of the technical school course in Moncton, and I was very much surprised to find that all of the graduates had jobs. I could hardly believe this.

This was not the whole school. They have four sections that close one day after another because they have so many attending that school that the closing used to last all day.

Senator Yuzyk: But, Senator Fergusson, do you not think it is important that we have these statistics. Otherwise how can we know?

Senator Fergusson: I am not asking you not to get the statistics, but you are giving the impression that it is very bad and I am saying that I have had this experience. I must have spoken to 20 or 25 of them, just spot checking myself, because from the information I had picked up on the Poverty Committee and from what I had read on the task force, I could scarcely believe that they were all provided for. Is this unusual, or are we now doing a better job in providing jobs?

Senator Yuzyk: First of all, regarding statistics, I believe you stated that you are two years behind on statistics regarding the whole manpower training program, is that right?

Mr. Meyer: That is part of the follow-up.

Senator Yuzyk: Why is it that you are two years behind? I can still understand one year, but why two years? Certainly we have much improved methods now of obtaining information compared to anything we have ever had before.

Mr. Meyer: If I talk about a two years' span, it relates to people who were placed in training for two years. The maximum training span, as I explained, is 52 weeks. In order to cover everyone who was placed in training at a particular point in time, we have to allow the maximum time span. We follow up three months after the completion of the year, so that is 15 months; and then we start processing the data, and so on, and producing the information, so that means pretty close to two years, senator.

Senator Yuzyk: I can understand that now, but we are still really two years behind on the whole program?

Mr. Meyer: Yes.

Senator Yuzyk: And the statistics you are going to give us will be as of two years ago. You should be able to have some statistics on certain programs, in particular in a region where I imagine the statistics are more readily available, are they not?

Mr. Meyer: No, senator. The follow-up statistics are only available in Ottawa. The follow-up survey is only conducted from headquarters. The regional offices do not conduct a separate follow-up.

Senator Fergusson: I wanted to make that comment, that I know a good many of them are coming out of these courses now with the opportunity to have jobs. Those that I was speaking to were in the business courses. Perhaps there are more openings for them in that sort of thing. Certainly they were provided with something to do.

Senator Yuzyk: Can I ask a question about the women, their employment after training and their accessibility to courses? The Royal Commission on the Status of Women claimed that there was discrimination against women in this whole manpower training program.

They also produced statistics indicating that women form 33 per cent of the labour force, that only 20 per cent of them receive any training, that which they do receive being usually for jobs which are reserved for women and are not management positions. Since women wish to play a role similar to that of men in this society, is it true that they are at a disadvantage in starting these courses?

Mr. Meyer: They were, or are, up to the point of royal assent for this bill, by virtue of what has become known as the three-year rule. A three-year attachment to the labour force is required before the trainee is eligible for allowances. This rule has mitigated against many women who, for a variety of reasons, do not have the three-year attachment to the labour force. Moreover, the legislation directly excluded housewives from the definition of the labour force. For these reasons, women were at a disadvantage.

Senator Yuzyk: Is there anything now being done to make it easier for them to upgrade themselves?

Mr. Meyer: One of the key amendments to the act is the removal of the three-year rule. From now on there is no requirement of attachment to the labour force. The sole qualification is to have attended school on a regular basis for a period of not less than one year before entry into training under the Canada Manpower Training Program. This applies only to those individuals who are placed in such training by a Manpower counsellor. It does not apply to situations in which the trainee receives training provided by an employer and the department reimburses the employer for the training. Neither will it apply to apprentice training, in which situations the training arrangements are really made under provincial jurisdiction and we assist the province financially in the operation of the program.

Senator Yuzyk: Are many women counsellors engaged in the Manpower training program?

Mr. Meyer: Yes.

Senator Yuzyk: So you are attempting to rectify the situation regarding the proportion of women from that point of view?

The Acting Chairman: Do you have the statistics?

Mr. Meyer: No.

Senator Yuzyk: You are still not trying to do that?

Senator Smith: I did not hear the answer.

Mr. Meyer: No, I do not have statistics.

Senator Yuzyk: That is again where we are working in the dark, because we do not have enough figures.

Senator Smith: It is obvious that quite a number of women are employed in the Manpower training program recommending people for courses. I live in a small town in which there is a Manpower centre with four counsellors, two of whom are women. There is nothing brand new about it.

Mr. Meyer: No; particularly since the major staff re-orientation took place in 1967 many female counsellors have been engaged. In fact, I have been informed by those in charge of personnel that they show a better staying power than the male counsellors recruited at that time.

Senator Smith: That is also my opinion, based on knowledge of what goes on in our Manpower training centre.

Senator Inman: How many courses may one individual take?

Mr. Meyer: There is no hard and fast rule in that regard, senator.

Senator Inman: Is one course per year available?

Mr. Meyer: No, it is one course of 52 weeks duration. In other words, there is a statutory limit on the duration of the course itself of 52 weeks.

Senator Inman: And another course may be taken during the following year?

Mr. Meyer: This happens many times, particularly in cases where the trainee needs to be brought up to an educational level required to enter a skill course. In many instances we first provide educational up-grading, to a maximum of 52 weeks, in order to meet the Grades 10, 11 and 12 level requirements of the skill courses, which in most instances follow immediately.

Senator Inman: How many courses would an adult be allowed to take, other than the skill courses?

Mr. Meyer: Depending on his need it could be two, namely an educational up-grading course and an occupational or skill course, the one following the other.

Senator Cameron: Have you any idea, even in round figures, of the percentage of students who require up-grading from Grade 7 to Grades 9 and 10?

Mr. Meyer: Approximately one-third of our budget is devoted to educational up-grading.

Senator Yuzyk: Are there many who start these courses with a level below Grade 8?

Mr. Meyer: Yes. It may go down as far as functional illiteracy.

Senator Yuzyk: And the Manpower training program educates them in the grade school in addition to skills?

Mr. Meyer: That is correct.

Senator Yuzyk: That is excellent.

Mr. Meyer: I should make it clear that we do not provide grade school training. We provide so-called educational up-grading in the subjects pertaining to the skill, math, science and communicative skills, but there is no history.

Senator Cameron: I come from the west and am informed that there is a shortage of workers having geophysical training to join field parties. What information have you in that respect? Do you offer geophysical training courses? If so, do you have any idea how many would be taking the subject?

Mr. Meyer: We have provided a fair amount of training, Senator Cameron. The names of the courses escape me, but we have been training those involved in the drilling of the blast holes, the blasting, survey parties and frogmen, particularly in the west and partly in support of the mapping program which is taking place there. It is also to quite an extent in support of oil exploration.

I would have to compile this type of detail. If you desire specific figures for your province, I would be more than happy to provide them.

Senator Cameron: It would be only Alberta, because the geophysical program is rather extensive now, particularly in the Northwest Territories.

Mr. Meyer: One of the problems, as I am sure you are aware, is the considerable turnover in such occupations. We hope to train more and more native people, particularly in surveying, which is open-air work in which they perform very well. We have discussed within the department the development necessary in order to give native people full access to the exploration and construction activities which will move forward from northern Alberta into the Mackenzie River Valley.

Senator Cameron: What percentage of native people are taking this training? The complaint we hear is that native people are not being given the chance, that the oil companies are bringing in non-native people from all over the place, and native people are just left sitting there.

Mr. Meyer: We have trained a fair number. I am now speaking from personal experience, having worked in that part of the country. We have trained a fair number of people, but their attractiveness to the employer frequently is not so much skill as their reliability as an employee, as I am sure you know.

Senator Quart: One of the questions that I had has been answered satisfactorily. But to follow up a question asked by Senator Inman, when we were on the Poverty Committee a senator from New Brunswick knew of a man who had four occupational training courses in an area where there was no hope of employment. Yet he was given an opportunity to attend another training course for another occupation. Does that seem logical? The members of the Poverty Committee who are here know that case was brought up. Afterwards he said, "Very likely this man will try next year, because it is so much easier to live this way and go on and take

another course." Most of the time it was in an area where there was no hope of employment for that particular course. Does that not seem an abuse?

Mr. Meyer: Yes, it would seem to be, senator. There may be circumstances that may explain the situation. I was made aware at one point in time of an individual in the west who managed to coast for four years on Manpower training by moving around the prairie region from one area to another.

Senator Quart: But he was evidently eligible to be given preferential treatment by whoever was the supervisor in that particular area.

Senator Macdonald: The Manpower officer is the man who determines whether a man should take a course. I think it fair to comment that in some areas a person can take more than one course. If the Manpower officer gives a course in one subject, and there is no work there, there is nothing to prevent him from giving the man another course.

Mr. Meyer: The situation you describe is a rather unusual one. It is difficult for me to comment without having specific details.

Senator Kinnear: My question is along the lines of that asked by Senator Bourget. Would you say that the 16 to 30 age group are more employable after training than the 30 to 45 age group? I am interested in knowing if the older person is easily placed after training, or is that where some of the difficulty lies?

Mr. Meyer: I cannot provide a ready answer to that, senator.

Senator Kinnear: Do you think that those from 16 years onward can be placed easily?

Mr. Meyer: We hope that they can be readily placed once they have been trained; but we have had no experience with them because they were excluded from the program by virtue of the three-year rule. Our experience starts from those who are about age 20.

Senator Kinnear: There is such difficulty getting the older person from, say, 35 to 45 placed at any time. I wondered if they can be retrained for a different skill, or, if their skill is increased by training, they are readily placed. In southern Ontario it is difficult to place people from 35 to 45 years of age. Do you find that to be the case in general?

Mr. Meyer: The statistics which I have reviewed do not specifically make this point, but I can see that it is a point of interest.

Senator Macdonald: Might I make a comment? I took this from the Toronto *Star* of yesterday. A young lady wrote saying that she had been trying to get a course since 1969 and had been placed on the waiting list since last April. She wanted the paper to do something about it. Here is she point. The paper says:

Our congratulations to this reader who has now started her course. . . She had been accepted by Manpower. . . last April but was 18th on a standby list with some hope of being able to start school in July.

Some time ago we contacted Canada Manpower, our reader was advanced from 18th to top position.

This looks to me like discrimination, if a newspaper can call a Manpower office and they can take somebody from 18th position and put her at the top of the list. What about the other 17?

Senator Smith: Even politicians cannot do that!

Mr. Meyer: I will look into that.

Senator Norrie: I have noticed in Nova Scotia that there is no apparent connection or co-ordination between the different Manpower centres throughout the province. If there are no jobs available in one area, there might be many jobs available in another area. Therefore people are missed and are not located in working positions. Is there any way whereby we could have better co-ordination in these matters? It seems to me that centres should co-operate with each other and let the others know where and when a job is available.

Mr. Meyer: I am sorry that you have that impression, senator, because we have what we call a clearance system, which is exactly the kind of mechanism that you advocate. It works this way: where a Canada Manpower centre cannot fill vacancies, as registered with the CMC by employers from its own files and in its own area, those vacancies are given in what we call in-clearance. There are two clearance ranges, the provincial range and the national range. It means that all CMCs in the area are made aware of vacancies. The basic characteristics of the vacancies are circulated, and the CMCs which may have a surplus of these specific skills are encouraged to refer their candidates, so to speak.

Senator Norrie: In other words, the general public does not know enough to fight for it—and I mean fight for it—insist on it, anyway.

Mr. Meyer: This may be one point.

Senator Norrie: It should be insisted on anyway.

Mr. Meyer: Those who have the skill and could be employed somewhere else are reluctant to go, for a variety of reasons.

Senator Norrie: There is another point that bothers me quite a lot. One has to be particularly persistent, almost a fighter, to obtain a second training course for somebody. The training course I have in mind was related to the first one, and the man could not work without having a second course. Had it not been for my persistence he could not have made his point with the officials at all and could not have been retrained. I did get him into the second course for retraining. As a matter of fact, he will have three courses.

Mr. Meyer: Did you use your influence on him?

Senator Norrie: I just used my temper.

Senator Yuzyk: And charm.

Mr. Meyer: Are you by any chance talking about an electronics course?

Senator Norrie: No. This man was a farmer. He was afraid he would become incapable in his later years, when he was about 50, because he had a bad back. He wanted to be retrained in finishing furniture. He was put into a cabinet making course, which was quite wrong. They would not listen to me. The man did not get a good instructor. The next year I tried to get him into upholstery, but it was nearly a year before they could get him adjusted. When I eventually dealt with the right person, the matter was dealt with immediately. Previously I had been dealing with people who were just not efficient. When I got to the right people I had no problem at all. This is what makes one so annoyed.

I know there is a problem with people taking several courses and just making a point of taking course after course, trying to keep themselves fed in that way, but it seems that they are not very well counselled. A man such as the one I have been referring to should not have to fight his way so much. He is a fine person, and competent too. I was told by different places that a man could not take any more than one course. I was told that myself, so this was no fairy tale. It was only when I got to Ottawa and spoke to one of the ministers that I was told one could insist on a course, and then I started to fight.

Mr. Meyer: I cannot comment on a specific case, because I do not know the details. As to the principle, as I mentioned before, the only legislative limitation is the 52 weeks on the duration of a course. The limitation on the number of courses is a matter of policy, in a sense. Quite frequently a person receives at least two courses, in that he receives educational up-grading to enable him to enter the skill course in the first place. Less frequently a person will have received two skill courses in succession. That is why I asked about the electronics course, because this is one area in which there are two tandem courses required in order to achieve reasonable employability. This is quite acceptable. Unfortunately, there are over 5,000 counsellors out in the field, and from time to time they may be inclined to make a decision or judgment which could be questioned.

Senator Norrie: My point is that this man could not fight his own battle; he had to get somebody else to fight his battle for him. This is what makes me somewhat annoyed. Why cannot they accept a person on his own qualifications and work it out by themselves? Why should I have to intervene and push the point?

Mr. Meyer: He could have insisted on seeing the CMC manager after he did not get satisfaction from the counsellor.

Senator Norrie: They just pushed him aside.

Senator Bonnell: I realize this makes a change in the Adult Occupational Training Act. Certainly it gives training allowances for

a large number of adults. I am wondering about the definition of "adult" in the bill, which is:

a person whose age is at least one year greater than the regular school leaving age in the province in which he resides.

Is that the same age in all provinces of Canada?

Mr. Meyer: No, and it is not the same within certain provinces. Generally it is around age 16, but there is considerable variation in the detailed legislation on the point. We analyzed this two years ago in order to enable our field people to make the right judgments, and we found that even within provinces ministers of education had certain authority to bring it down as far as 14 years. For example, the school leaving age is 16 in Manitoba, but if the nearest school is more than 25 miles away, or something of that nature, they are excused at age 14. This makes it very difficult.

Senator Bonnell: You do not know the statistics of the ages in different provinces? It could be different ages in different parts of one province? Is that what you say?

Mr. Meyer: Yes, this could be the case. You would almost have to determine it person by person, depending on the special circumstances.

Senator Bonnell: We realize that at the present time the unemployment rate in Canada is going down, but there has been a comparatively high unemployment rate in Canada during the last year. Is there any contemplation by the Department of Manpower and Immigration to amalgamate the Unemployment Insurance and Manpower offices into one office, so that somebody who is unemployed can go to the next wicket and say, "Put me on training so I can get a job. I haven't any skills at the moment, but there are jobs available if I have a skill." There does not seem to be enough correlation or co-operation between Unemployment Insurance and Manpower. They seem to be separate and apart, whereas I think that when a man is unemployed he should be able to go to the very next wicket and see the Manpower officer to find out if he can be trained for a skill for which there is a demand, so that he can get a job. On many occasions when there is a high rate of unemployment in the country there are many jobs available, if the people were trained for them.

Mr. Meyer: From where I sit I can see that the relationship between the two services is actively being strengthened. To what extent they may become physically or otherwise integrated is something in the mind of our deputy minister, and perhaps his minister. I would not be able to comment on that.

Senator Macdonald: Was not what Senator Bonnell is suggesting the case some time ago, and then they were separated?

Senator Bonnell: They used to be very close, but then they seemed to be pulled apart. They should be pulled together, to get them very close.

Senator Macdonald: I think that is a matter of policy of the department.

Senator Bonnell: I think it needs amendment. It would be a great asset to a lot of people who were previously disadvantaged and not able to take advantage of a training program.

Senator Inman: How are your instructors chosen? Do they have an examination of any kind?

Mr. Meyer: You mean the people who teach on the courses?

Senator Inman: Yes.

Mr. Meyer: No. We have no control over that, because this is entirely within provincial jurisdiction. If we are unhappy about the performance of a particular teacher, who may be brought to our attention by trainees, we may pass the information on to the responsible provincial officials. In the final analysis it is the provincial responsibility to choose instructors, teachers and trainers, and see that they have the proper skills for the jobs they are to do.

Senator Inman: You have no control over the provincial appointments at all?

Mr. Meyer: None whatsoever.

Senator Yuzyk: I would like to have some information about industry training as compared with, say, regular vocational training. What proportion of the trainees are in in-industry training?

I would like just a brief answer to my question. I would like to know which is the more successful—the regular vocational training, or the in-industry training, from the point of view of employment.

Mr. Meyer: I am not sure that we can put it in those terms, senator. Perhaps after the meeting I could discuss this with you in some detail. In principle, the in-industry training, as you call it, is relatively a very small part of our total program, as has probably been pointed out by the Economic Council of Canada. We had a major on-the-job training program during the past winter. That is somewhat different. That certainly has enjoyed a great deal of popularity with industry. At the moment we are engaged in a follow-up survey to determine just what it cost and what its popularity may be. Certainly, the 75 per cent reimbursement of wages would contribute to it. We want to determine whether it is as effective a training program as we hoped it would be. That really should be considered separate from our normal in-industry training program which has been conducted since the beginning of 1967. That has been a good but very small program.

Senator Yuzyk: But it has been a good program?

Mr. Meyer: Yes, a good program.

Senator Yuzyk: And it can be improved now?

Mr. Meyer: Yes.

Senator Yuzyk: And you do say it is becoming more popular.

Mr. Meyer: Yes.

Senator Bourget: Is there an age limit at which a trainee can apply?

Mr. Meyer: Any training, or training in industry?

Senator Bourget: Any training?

Mr. Meyer: There is an age limit in the sense that he must be one year past the school leaving age.

Senator Bourget: That I understand, but what about the upper limit?

Mr. Meyer: There is no upper limit.

Senator Smith: It is a matter of judgment for the official who refers him.

Senator Bourget: Is the entire cost borne by the central government in all cases?

Mr. Meyer: Yes, it is. In the case of institutional training, yes. In the case of training in industry, no. In the case of training in industry the employer makes a certain contribution, mostly in terms of overhead costs.

Senator Bourget: And all the instructors are paid by the federal government?

Mr. Meyer: The instructional staff is paid by the province, but the federal government reimburses the full cost.

Senator Bourget: 100 per cent?

Mr. Meyer: Yes, 100 per cent.

Senator Bourget: What was the cost of that program last year, and what will it cost this year? We may find those figures in the Estimates, but perhaps you have them at hand.

Mr. Meyer: Last year the budgeted cost was approximately \$325 million. We received an additional \$15 million later on in the fall, in order to provide additional training as part of the government winter works program. We did not use all of the additional money, so the actual fund consumption has been somewhat over \$330 million. This year it will be in the order of \$350 million.

Senator Norrie: I understand that you have the same amount of money in the new bill to spread over the services?

Mr. Meyer: That is correct.

Senator Norrie: If we have the same amount of money, are we not servicing fewer people, or is it more streamlined, or being more efficiently handled?

Mr. Meyer: We have the same amount of money this year, but we will have a broader group to choose from, because we have

removed the three-year limitation. We know from the past that something in the order of 9 per cent of the trainees do not receive allowances. These are the people who will now be able to receive allowances. They will be at the bottom of the scale, about \$43 a week allowance. As you have noticed, the act provides for a special allowance, which will probably be in the order of \$30 a week. This allowance is intended for those people who do not need to provide for themselves entirely. We are thinking here of the young adult of 17 or 18 years of age who is living with his or her parents, and the father works. There is no particular problem there. In those situations, this young adult does not need entirely to look after himself; he is part of the family. It is felt that a reduced allowance should be satisfactory there. Similarly for the housewife who wants to return to the labour force and needs to receive some training prior to that, but whose husband works and provides a normal income and support. She does not have all the responsibilities of the single adult. The same kind of situation will apply there. She will receive the basic allowance of \$30. Since these allowances are fairly low and the total number of trainees, the 9 per cent, is rather limited, we believe that we can provide necessary funds out of the flexibility that is in the total budget, and we do not expect this to cause any reduction in the number of trainees.

Senator Norrie: There is a section in this pamphlet which says that in Quebec anyone who is taking one of these training courses gets \$47 a week, but if he is on unemployment this gives him \$90, and the department makes up the difference.

Mr. Meyer: The Unemployment Insurance does?

Senator Norrie: Yes, the Unemployment Insurance, so actually anyone who is getting under \$90 a week, if they are under the Unemployment Insurance, they get that?

Mr. Meyer: They must have entitlement to the insure benefit.

Senator Norrie: Yes, but that only covers those who are entitled to the insurance.

Mr. Meyer: That is correct.

Senator Bonnell: I would like to have one thing clear in my mind. You have said that the same amount of money was available and you have said that the three-year limitation or waiting period is off and you said there are not going to be any limitations in the number of people on training, that you will have the same number of people. What I am anxious to know is this: Has the total federal budget for manpower training been used up in each year for the last three years, say, or has there been a certain surplus left over because there was no program available?

Mr. Meyer: Every year it has been consumed to within less than one per cent.

Senator Bonnell: Thank you. I am ready for the vote, Mr. Chairman.

The Acting Chairman: Are there any more questions?

Senator Smith: I move that we report the bill without amendment.

The Acting Chairman: Is that agreed?

Hon. Senators: Agreed.

The Acting Chairman: It is carried.

The committee adjourned.

APPENDIX

The Honourable C.W. Carter,
The Senate,
OTTAWA, Ontario.

June 29, 1972
OTTAWA K1A 0J9

Dear Senator Carter:

As promised during this morning's committee meeting on Bill C-195, I attach a set of five tables showing by Region the placement and employment of persons who received skill training under the Adult Occupational Training Act. The tables provide a breakdown by major course (occupational) group and show a cumulative summary for a 12-month survey period ending April-May 1971.

In the columns are given for each major course group actual numbers and, below it, the percentage relationship.

Unfortunately, a national aggregation is not available at this time. However, the content of the tables can be summarized as follows:

	Employed	Not Employed*
	(%)	(%)
Atlantic Region	73.1	26.9
Quebec Region	78.2	21.8
Ontario Region	67.0	33.0
Prairie Region	79.6	21.4
Pacific Region	73.7	26.3
Canada	74.6	25.4

* Of those not employed within three months of completion of training approximately 20% did actively seek work.

The survey results do not yet include information which shows the relative success in obtaining employment upon completion of training between age groups, for instance, the age group 20-30 as compared to the age group 40-50. I regret that this information cannot be provided.

Yours sincerely,

H. John Meyer,
A/Director,
Manpower Training Branch.

ADULT OCCUPATIONAL TRAINING STATISTICS

TRAINING OUTCOMES BY MAJOR COURSE GROUP
 1970 TWELVE-MONTH CUMULATIVE SUMMARY: SKILL RETRAINING
 (SURVEY PERIOD ENDING: APRIL-MAY, 1971)

ATLANTIC REGION

Course group	Training outcome						Response rate		
	Employed			Not employed			Total respondents	Non-response	Total surveyed
	Course occupation	Related occupation	Not related	Seeking work	Not seeking	Further training			
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
Supervisory, Para-Professional and Technical	74 21.3%	37 10.7%	158 45.5%	48 13.8%	21 6.1%	9 2.6%	347 100.0%	218 38.6%	565
Clerical, Sales, Service and Recreation	245 25.8%	119 12.5%	204 21.4%	292 30.7%	81 8.5%	10 1.1%	951 100.0%	459 32.6%	1,410
Transport and Communication	75 31.6%	9 3.8%	83 35.0%	64 27.0%	4 1.7%	2 0.9%	237 100.0%	114 32.5%	351
Farmers and Farm Workers	40 51.3%	1 1.3%	24 30.8%	7 9.0%	3 3.8%	3 3.8%	78 100.0%	57 42.2%	135
Hunting, Trapping, Fishing, Logging and Mining	96 31.3%	12 3.9%	126 41.0%	56 18.2%	14 4.6%	3 1.0%	307 100.0%	217 41.4%	524
Machining, Welding, Plumbing, Sheet Metal and Related	166 31.1%	12 2.2%	199 37.3%	141 26.4%	7 1.3%	9 1.7%	534 100.0%	262 32.9%	796
Mechanics and Repairmen	164 25.6%	26 4.0%	282 44.0%	128 20.0%	18 2.8%	23 3.6%	641 100.0%	278 30.3%	919
Construction and Other Craftsmen and Production Process	167 21.4%	29 3.7%	314 40.3%	220 28.3%	30 3.9%	19 2.4%	779 100.0%	459 36.0%	1,218
TOTAL	1,027 26.5%	245 6.3%	1,390 35.9%	956 24.7%	178 4.6%	78 2.0%	3,874 100.0%	2,044 34.5%	5,918

NOTE: Number in brackets below Course Number is approximate equivalent D.B.S. Occupational Classification.

TRAINING OUTCOMES BY MAJOR COURSE GROUP
1970 TWELVE-MONTH CUMULATIVE SUMMARY: SKILL RETRAINING
(SURVEY PERIOD ENDING: APRIL-MAY, 1971)

QUEBEC REGION

Course group	Training outcome						Response rate		
	Employed			Not employed			Total respondents	Non-response	Total surveyed
	Course occupation	Related occupation	Not related	Seeking work	Not seeking	Further training			
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
Supervisory, Para-Professional and Technical	22 7.7%	23 8.1%	145 51.1%	67 23.6%	16 5.6%	11 3.9%	284 100.0%	137 32.5%	421
Clerical, Sales, Service and Recreation	300 18.2%	162 9.8%	365 22.2%	615 37.4%	157 9.5%	48 2.9%	1,647 100.0%	840 33.8%	2,487
Transport and Communication	110 68.3%	1 0.6%	33 20.5%	13 8.1%	3 1.9%	1 0.6%	161 100.0%	102 38.8%	263
Farmers and Farm Workers	373 82.9%	4 0.9%	51 11.3%	18 4.0%	1 0.2%	3 0.7%	450 100.0%	115 20.4%	565
Hunting, Trapping, Fishing, Logging and Mining	55 23.8%	15 6.5%	123 53.2%	35 15.2%	2 0.9%	1 0.4%	231 100.0%	87 27.4%	318
Machining, Welding, Plumbing, Sheet Metal and Related	46 17.9%	23 8.9%	95 37.0%	70 27.2%	10 3.9%	13 5.1%	257 100.0%	101 28.2%	358
Mechanics and Repairmen	90 12.6%	26 3.6%	302 42.2%	252 35.2%	22 3.1%	24 3.3%	716 100.0%	378 34.6%	1,094
Construction and Other Craftsmen and Production Process	194 19.2%	50 4.9%	318 31.4%	317 31.3%	114 11.3%	19 1.9%	1,012 100.0%	502 33.2%	1,514
TOTAL	1,190 25.0%	304 6.4%	1,432 30.1%	1,387 29.2%	325 6.8%	120 2.5%	4,758 100.0%	2,262 32.2%	7,020

NOTE: Number in brackets below Course Number is approximate equivalent D.B.S. Occupational Classification.

TRAINING OUTCOMES BY MAJOR COURSE GROUP
1970 TWELVE-MONTH CUMULATIVE SUMMARY: SKILL RETRAINING
(SURVEY PERIOD ENDING: APRIL-MAY, 1971)

ONTARIO REGION

Course group	Training outcome						Response rate		
	Employed			Not employed			Total respondents	Non-response	Total surveyed
	Course occupation	Related occupation	Not related	Seeking work	Not seeking	Further training			
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
Supervisory, Para-Professional and Technical	47 17.7%	16 6.0%	117 44.2%	60 22.6%	20 7.6%	5 1.9%	265 100.0%	210 44.2%	475
Clerical, Sales, Service and Recreation	465 25.2%	297 16.1%	341 18.5%	559 30.4%	163 8.8%	18 1.0%	1,843 100.0%	1,471 44.4%	3,314
Transport and Communication	35 48.6%	— 0.0%	19 26.4%	17 23.6%	1 1.4%	— 0.0%	72 100.0%	56 43.8%	128
Farmers and Farm Workers	37 67.3%	3 5.5%	8 14.5%	4 7.3%	2 3.6%	1 1.8%	55 100.0%	31 36.0%	86
Hunting, Trapping, Fishing, Logging and Mining	— 0.0%	— 0.0%	1 12.5%	2 25.0%	— 0.0%	5 62.5%	8 100.0%	1 11.1%	9
Machining, Welding, Plumbing, Sheet Metal and Related	112 21.7%	45 8.7%	190 36.7%	158 30.6%	8 1.5%	4 0.8%	517 100.0%	379 42.5%	896
Mechanics and Repairmen	145 31.8%	10 2.2%	176 38.7%	110 24.2%	10 2.2%	4 0.9%	455 100.0%	414 47.6%	869
Construction and Other Craftsmen and Production Process	143 18.7%	31 4.1%	278 36.4%	268 35.1%	40 5.2%	4 0.5%	764 100.0%	617 44.7%	1,381
TOTAL	984 24.7%	402 10.1%	1,130 28.4%	1,178 29.6%	244 6.2%	41 1.0%	3,979 100.0%	3,179 44.4%	7,158

NOTE: Number in brackets below Course Number is approximate equivalent D.B.S. Occupational Classification.

TRAINING OUTCOMES BY MAJOR COURSE GROUP
1970 TWELVE-MONTH CUMULATIVE SUMMARY: SKILL RETRAINING
(SURVEY PERIOD ENDING: APRIL-MAY, 1971)

PRAIRIE REGION

Course group	Training outcome						Response rate		
	Employed			Not employed			Total respondents	Non-response	Total surveyed
	Course occupation	Related occupation	Not related	Seeking work	Not seeking	Further training			
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
Supervisory, Para-Professional and Technical	81 33.9%	4 1.7%	98 41.0%	26 10.9%	22 9.2%	8 3.3%	239 100.0%	131 35.4%	370
Clerical, Sales, Service and Recreation	245 39.8%	72 11.7%	112 18.2%	106 17.2%	64 10.4%	17 2.7%	616 100.0%	448 42.1%	1,064
Transport and Communication	— 0.0%	— 0.0%	— 0.0%	— 0.0%	— 0.0%	1 100.0%	1 100.0%	—	1
Farmers and Farm Workers	47 81.0%	6 10.4%	5 8.6%	— 0.0%	— 0.0%	— 0.0%	58 100.0%	12 17.1%	70
Hunting, Trapping, Fishing, Logging and Mining	6 11.8%	— 0.0%	28 47.5%	18 30.5%	6 10.2%	— 0.0%	59 100.0%	68 53.5%	127
Machining, Welding, Plumbing, Sheet Metal and Related	74 34.4%	7 3.3%	90 41.8%	40 18.6%	3 1.4%	1 0.5%	215 100.0%	158 42.4%	373
Mechanics and Repairman	91 35.3%	6 2.3%	99 38.4%	46 17.8%	4 1.6%	12 4.6%	258 100.0%	156 37.7%	414
Construction and Other Craftsmen and Production Process	68 28.7%	3 1.3%	103 43.4%	59 24.9%	3 1.3%	1 0.4%	237 100.0%	155 39.5%	392
TOTAL	613 36.4%	98 5.8%	535 31.8%	295 17.5%	102 6.1%	40 2.4%	1,683 100.0%	1,128 40.1%	2,811

NOTE: Number in brackets below Course Number is approximate equivalent D.B.S. Occupational Classification.

TRAINING OUTCOMES BY MAJOR COURSE GROUP
1970 TWELVE-MONTH CUMULATIVE SUMMARY: SKILL RETRAINING
(SURVEY PERIOD ENDING: APRIL-MAY, 1971)

PACIFIC REGION

Course group	Training outcome						Response rate		
	Employed			Not employed			Total respondents	Non-response	Total surveyed
	Course occupation	Related occupation	Not related	Seeking work	Not seeking	Further training			
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
Supervisory, Para-Professional and Technical	90 23.9%	44 11.7%	211 55.9%	27 7.1%	4 1.1%	1 0.3%	377 100.0%	144 27.6%	521
Clerical, Sales, Service and Recreation	256 34.4%	90 12.1%	155 20.9%	170 22.9%	63 8.5%	9 1.2%	743 100.0%	429 36.6%	1,172
Transport and Communication	6 31.6%	— 0.0%	8 42.1%	5 26.5%	— 0.0%	— 0.0%	19 100.0%	8 29.6%	27
Farmers and Farm Workers	21 56.8%	3 8.1%	9 24.3%	2 5.4%	2 5.4%	— 0.0%	37 100.0%	17 31.5%	54
Hunting, Trapping, Fishing, Logging and Mining	13 19.1%	1 1.5%	19 28.0%	31 45.6%	2 2.9%	2 2.9%	68 100.0%	60 46.9%	128
Machining, Welding, Plumbing, Sheet Metal and Related	63 35.8%	12 6.8%	40 22.7%	56 31.8%	2 1.2%	3 1.7%	176 100.0%	112 38.9%	288
Mechanics and Repairmen	68 28.7%	7 3.0%	98 41.3%	56 23.6%	5 2.1%	3 1.3%	237 100.0%	146 38.1%	383
Construction and Other Craftsmen and Production Process	72 28.5%	3 1.2%	89 35.2%	75 29.6%	11 4.3%	3 1.2%	253 100.0%	151 37.4%	404
TOTAL	589 30.8%	160 8.4%	629 32.9%	422 22.1%	89 4.7%	21 1.1%	1,910 100.0%	1,067 35.8%	2,977

NOTE: Number in brackets below Course Number is approximate equivalent D.B.S. Occupational Classification.



FOURTH SESSION—TWENTY-EIGHTH PARLIAMENT

1971-1972

THE SENATE OF CANADA

PROCEEDINGS OF THE STANDING SENATE COMMITTEE ON **HEALTH, WELFARE AND SCIENCE**

The Honourable MAURICE LAMONTAGNE, P.C., *Chairman*

Issue No. 3

WEDNESDAY, JULY 5, 1972

Complete Proceedings on Bill C-183:
"An Act to amend the Canada Labour Code".

REPORT OF THE COMMITTEE

(Witnesses—See Minutes of Proceedings)

THE SENATE COMMITTEE ON HEALTH,
WELFARE AND SCIENCE

Chairman: The Honourable Maurice Lamontagne

The Honourable Senators:

Bélisle	Hastings
Blois	Hays
Bonnell	Inman
Bourget	Kinnear
Cameron	Lamontagne
Carter	Macdonald
Connolly (<i>Halifax North</i>)	McGrand
Croll	Michaud
Denis	Phillips
Fergusson	Quart
Fournier (<i>de Lanaudière</i>)	Smith
Fournier (<i>Madawaska- Restigouche</i>)	Sullivan
Goldenberg	Thompson
	Yuzyk—(27)

Ex officio Members: Flynn and Martin

(Quorum 7)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate,
Tuesday, July 4, 1972:

"Pursuant to the Order of the Day, the Honourable Senator
Goldenberg moved, seconded by the Honourable Senator
Bourque, that the Bill C-183, intituled: "An Act to amend the
Canada Labour Code", be read the second time.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Goldenberg moved, seconded by the
Honourable Senator Bourque, that the Bill be referred to the
Standing Senate Committee on Health, Welfare and Science.

The question being put on the motion, it was—

Resolved in the affirmative."

Robert Fortier,
Clerk of the Senate.

Minutes of Proceedings

Wednesday, July 5, 1972.

(3)

Pursuant to adjournment and notice the Standing Senate Committee on Health, Welfare and Science met this day at 10.05 a.m.

Present: The Honourable Senators Lamontagne (*Chairman*), Blois, Bourget, Cameron, Carter, Fergusson, Fournier (*de Lanaudière*), Goldenberg, Hastings, Kinnear, Macdonald, Martin and Smith. (13)

Present but not of the Committee: The Honourable Senators Argue, Benidickson, Connolly (*Ottawa West*), Duggan, Grosart, Hicks, Lawson and McDonald. (8)

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

On motion of the Honourable Senator Fergusson, it was Resolved to print 800 copies in English and 300 copies in French of the proceedings of this Committee.

The Committee proceeded to the consideration of Bill C-183, "An Act to amend the Canada Labour Code".

The following witnesses were heard in explanation of the Bill:

Department of Labour:

Hon. Martin O'Connell, P.C., Minister.

Mr. Bernard Wilson, Deputy Minister.

Mr. William P. Kelly, Assistant Deputy Minister (Industrial Relations).

Mr. Robert W. Mitchell, Director of Legal Services.

Mr. Robert Armstrong, Special Assistant to the Deputy Minister.

During the question period that followed, the Honourable Senator Macdonald moved:

That the preamble be deleted from the Bill.

The motion was declared out of order by the Chairman, as being a direct negative. However, a motion to adopt the preamble was subsequently carried.

On motion duly put, it was Resolved to report the said Bill without amendment.

At 12.35 p.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Patrick J. Savoie,
Clerk of the Committee.

Report of the Committee

Wednesday, July 5, 1972.

The Standing Senate Committee on Health, Welfare and Science to which was referred Bill C-183, intituled: "An Act to amend the Canada Labour Code", has in obedience to the order of reference of July 4, 1972, examined the said Bill and now reports the same without amendment.

Respectfully submitted.

Maurice Lamontagne,
Chairman.

The Standing Senate Committee on Health, Welfare and Science

Evidence

Ottawa, Wednesday, July 5, 1972

The Standing Senate Committee on Health, Welfare and Science, to which was referred Bill C-183, to amend the Canada Labour Code, met this day at 10 a.m. to give consideration to the bill.

Senator Maurice Lamontagne (*Chairman*) in the Chair.

The Chairman: Honourable senators, we have with us this morning Mr. Bernard Wilson, the Deputy Minister of Labour; Mr. Robert Mitchell, Director of Legal Services; Mr. William Kelly, Assistant Deputy Minister (Industrial Relations); and Mr. Robert Armstrong, Special Assistant to the Deputy Minister.

I understand that the minister is at the moment reporting to cabinet on the fight for job security in Montreal, Trois-Rivières and Quebec City, and that he intends to come to this meeting as soon as he can. We might start without him, and I am sure that we will have completely satisfactory answers to all our worries and concerns about this bill from the experts who are here with us this morning.

As far as procedure is concerned, this is an unusual bill, in the sense that it has a preamble and five clauses, the last four clauses appearing right at the end of the bill itself, clause 2 being at the bottom of page 70 and clauses 3, 4 and 5 being on page 72. You will see that clause 1 is a rather long one, starting on page 2 and continuing to page 70. This clause deals with the changes to Part V of the Canada Labour Code.

First of all, since I detect, unless I am wrong in my interpretation, that there does not seem to be too much objection to the last four clauses, I suggest that we deal with those clauses first. Then we could deal with the preamble. I would then try to put all of clause 1—if you do not mind, and you can object to this, as I said—starting on page 2, with the exception of sections 149, 150, 151, 152 and 153, so as to hasten the procedure. Would this be agreeable to the members of the committee?

Hon. Senators: Agreed.

The Chairman: Clause 2 appears at the bottom of page 70. I am quite sure there is no objection to that clause. Is it carried?

Hon. Senators: Carried.

The Chairman: Clause 3 appears at page 72. Shall clause 3 carry?

Hon. Senators: Carried.

The Chairman: These are all technical clauses. Shall Clause 4 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 5 carry?

Hon. Senators: Carried.

The Chairman: Now we revert to the beginning of the bill. Shall the preamble carry?

Senator Macdonald: What is the purpose of the preamble? I thought we had done away with preambles in this day and age.

The Chairman: Mr. Wilson, would you agree that it is in the nature of a declaration of faith by the government?

Mr. Bernard Wilson, Deputy Minister, Department of Labour: Generally, that is so. The intention of the preamble is to refer to the long tradition that exists in this country with respect to collective bargaining between labour and management. It indicates that there is really a freedom of association on the part of employers and employees, and that the right to bargain collectively is the keystone of our industrial relations system. This legislation, as it is written, is a testimony to that, and the preamble is simply an indication of the faith of the government, as you put it, Mr. Chairman, in collective bargaining, the freedom of association and the right to organize.

Senator Macdonald: There is no preamble in the original act.

Mr. Wilson: That is right.

Senator Macdonald: I move that we delete the preamble, Mr. Chairman.

The Chairman: I am advised that your motion is out of order because it is put purely in the negative. It does not amend a clause of the bill and, apparently, is not in accordance with our rules.

Senator Grosart: The preamble is not a clause of the bill, Mr. Chairman.

The Chairman: It is a separate section of the bill. You can vote against the preamble, but I do not think you can move that it be deleted.

Senator Smith: Let us vote on it.

The Chairman: Does the preamble carry?

Some hon. Senators: Yes.

Senator Macdonald: No.

The Chairman: Those in favour, please signify. I declare the preamble carried.

Senator Martin: I wonder if it is correct, Mr. Chairman, that if we had wanted to we could not delete that preamble.

Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel: Yes, by voting against it, but a direct negative is not acceptable as an amendment and is not permissible.

The Chairman: I recall the Leader of the Government being declared out of order in the other place for trying to do exactly that.

Honourable senators, I will refer to sections rather than clauses when we deal with the content of Part V of the Labour Code so as to try not to be too confusing. Do you have any questions or objections to raise with respect to this part of the bill, dealing with sections 107 to 148 inclusive—that is, not including the sections dealing with technological change?

Senator Goldenberg gave a full explanation of this part of the bill last evening and, so far as I could see, no one in the Senate had any objection to raise with respect to these sections. Are you prepared to deal with them as a package?

Hon. Senators: Agreed.

The Chairman: Shall section 107 to section 148 inclusive, carry?

Hon. Senators: Carried.

The Chairman: We now come to the sections dealing with technological change, section 149, at page 34, to section 153, inclusive, at page 39.

Mr. Wilson, would you like to make an opening statement to explain these sections? If not, I will be in the hands of the members of the committee.

Mr. Wilson: Well, if any of the honourable senators have questions on sections 149 through to 153 I would be happy to answer them.

The Chairman: Are there any questions?

Senator Grosart: Mr. Chairman, I should like to raise the matter of the definition in section 149, subsection (1), paragraph (a) and paragraph (b). It looks like a very broad definition. Under this definition it seems that the introduction by an employer of any equipment or material different from that previously used in the business, and a change in the method by which that material is processed would be something that would fall within the definition of "technological change". I think it is not an exaggeration to say that, from the point of view of anyone who has studied science and technology, the definition is absurd. Many things would fall within that definition which are not technological change by any normal, standard definition.

For example, suppose a manufacturer's supplier runs out of the material the manufacturer is using and, as a result, the manufacturer

changes suppliers and, therefore, changes the material he is using. To some extent he may have to change the method by which he processes that material. According to the definition of "technological change" in the bill that would be a technological change. Now, is that not a bit absurd? Of course, it may be said in answer to that, that in other sections or clauses of the bill there are qualifications having to do with the effect of so-called "technological change" on job security, but the point I am making is that there are two operative aspects to this. One is that if there is an allegation of technological change then this whole cumbersome procedure can automatically be initiated. Later on, of course, the board is required to take into consideration its effect on job security. I suggest that there should be added to paragraphs (a) and (b) a further paragraph, (c), which would be a definition relating technological change to its effect on job security. Then you would have a sensible answer to any criticism that this was just a catch-all definition.

The Chairman: Could we delay in dealing with your second point for a moment, senator, and let the witnesses deal with your first point, the initial definition included in section 149. I have some questions about that myself. Then we can come to your second point later, if you do not mind.

Senator Grosart: I mentioned this because I have had the other answer before. I agree with you and I would like to deal with it just as a definition, having in mind what it will or could do. I say that because, taking this very broad definition, you can have a bargaining agent on one side who can apply to the board and start this whole process which could hold up even a minor technological change for a whole year. Would it not be better to have a definition that would bear some resemblance to what is normally known as technological change?

Mr. Wilson: The whole thrust of these clauses is, of course, to put the matter of technological change and adjustments to it into the area that the parties prefer, that is, in collective bargaining where they will settle their own affairs. There is a provision, as you have suggested, whereby they may elect to have arbitration on job security, and that, of course, is as it should be. Actually the definition could be much wider. In fact, in the railway agreements they deal also with operational and organizational changes; whereas, as you can see from this, it deals with technological changes and results flowing from them.

Senator Grosart: The definition does not deal anywhere with the results flowing from technological change.

Mr. Wilson: Well, there is a change in the manner in which an employee carries on his work which is directly related to the technological change.

Senator Grosart: I am suggesting that this definition has nothing to do with technological change.

Mr. Wilson: With the effect of technological change.

The Chairman: Certainly not with the effect of technological change.

Senator Grosart: It has nothing to do with the effect or anything else. It merely says that for the purposes of these sections all these things are technological change. Now it is a pretty good principle that an act of Parliament should not by its wording be stupid, and I say it is stupid to confine technological change to—

Mr. Wilson: This is merely a definition.

The Chairman: But this is the definition which starts the whole procedure and so it is very important.

Mr. Wilson: But Senator Grosart has claimed that it is very wide.

Senator Grosart: Yes.

Mr. Wilson: I have said, on the other hand, that there are actual agreements covering thousands of employees in Canada on the railways and other lines in which the definition is much wider than that.

Senator Grosart: Surely you are missing the point. There may be other acts which take into account—

Mr. Wilson: Not other acts; other agreements.

Senator Grosart: All right, other agreements which take into account things other than technological change. I am not arguing that. But what I am speaking of is the definition of technological change in this act. That is all I am speaking of, and I am saying that it is not a reasonable definition of technological change, and my objection is that it does start this whole process. We can come back to this later, but obviously if this process starts, as I read the act, the whole agreement can be thrown wide open.

Mr. Wilson: Not merely by reason of the definition.

Senator Goldenberg: No.

Senator Grosart: Well, we will see.

The Chairman: It starts the process, but it does not necessarily reopen the contract or the agreement.

Senator Grosart: What I am suggesting is that it will come to that.

The Chairman: For instance, how would you define “material”?

Mr. Wilson: Plastic, wood, glass, fibre.

The Chairman: Would the production of a new schedule for airline pilots, for instance, be material?

Mr. Wilson: No, I do not think so. If they started flying people by tubes and freezing them in containers and ejecting them by jets, I would think that would be a change in material.

The Chairman: But if they should change the type of plane?

Mr. Wilson: Well, there certainly would be a change in the method by which they operate, but it would have to be related to (2) (a) in that they were employing a different method of propelling the aircraft.

The Chairman: So a schedule or the production of a piece of paper is not material?

Mr. Wilson: That might be operational or organizational, but hardly technological.

Senator Goldenberg: One of the reasons, as I understand it, Mr. Chairman, that the trade unions objected to this definition was that it is too narrow, and they wanted to include operational and organizational change which is very important in its impact on employment. As Mr. Wilson says, in the case of the railways we included operational and organizational change by agreement. So this is a much narrower definition.

The Chairman: But I think the constant reference to the railways does not apply here because I understand that this has come as a result of an agreement between the parties, and the procedure for dealing with these changes is quite different from that which is provided in this bill. So I do not think we should constantly refer to this kind of agreement since, in my view, it has nothing to do with this bill.

Senator Goldenberg: If I may differ from you, Mr. Chairman, Senator Grosart is criticizing the definition, and all I am saying with respect to the railways is that they go further and include as technical change operational and organizational changes, and that is not included in this definition.

Senator Grosart: Mr. Chairman, may I say that I agree entirely. The definition is inadequate on both counts: it is too broad in one; and it is too narrow in another. That is why I say to have a definition of technological change which is related only to a change in equipment plus method is just unrealistic. I agree with Senator Goldenberg that technological change can be operational, it can be management or it can be marketing. These are all regarded today as technological change, so I agree there. The fact that it is too sweeping in one sense does not mean that it cannot be too narrow in another. I just say that it is a bad definition, that it is laughable and is going to cause a lot of trouble.

Let us take the position of a union leader—and I have the greatest sympathy for them—who is pressed by his members. He will be required, if he is a good union leader, under certain circumstances to look at this act to find out how he can reopen an agreement. If he relies on this definition, he can in a minor change, which by no definition that I have ever heard of could be called a technological change, invoke this whole procedure and hold up the change. And this not because he objects to any technological change or its effects, but merely because he wants to reopen the whole contract. That is why we should have a realistic definition of technological change, and I would agree that it should include operational and other matters. But somebody who knows something about technological change should sit down with the draftsmen and come up with a definition that makes sense.

The Chairman: You wanted to raise a second point related to this, and it might be a good time to raise that second point now. It too was related, I think, to the definition.

Senator Grosart: The second point is that if the matter does come before the board then the board is required, under the Act, to relate technological change to the specific matter with which we are concerned. I agree there should be protection for any worker who is displaced from his job permanently, just as there is with respect to temporary displacement. If a man is permanently displaced I believe he should be protected. I am 100 per cent in favour of this.

The Chairman: I think the definition should include what the board must find before ordering commencement of new negotiations. I will paraphrase subsection 152(2), where it says the board has to find that the technological change is likely substantially and adversely to affect the terms and conditions or security of employment of a significant number of employees. It seems to me that if we had this kind of general definition you would avoid the irresponsible requests from parties who wish to come before the board. After all, the objective of the legislation is not to prevent technological change but, as Senator Goldenberg indicated yesterday, to protect the workers against the adverse effects of that change. It seems to me it would be logical to include in the general definition, along with section 149, the findings which the board will have to make as a result of a request for a hearing.

Mr. Wilson: Well, it is a matter of drafting, I suppose.

The Chairman: I do not think it is a matter of drafting. It would reduce a lot of the objections to the definition included in section 149.

Senator Martin: Mr. Chairman, may I point out to you that when a court, a board or anyone else comes to interpret subsection 149(1)(a) and (b), if there is any doubt as to the meaning, the way they interpret it is by looking at other relevant sections. You have just referred to subsection 152(2)(b), and this would be one of the sections to which they would refer in an endeavour to reach a judicial interpretation.

The Chairman: However, this is for the board to decide. If we stick to the definition of technological change as it is in section 149, I think Senator Grosart's point is well taken. Almost any matter could be brought before the board by the union, and the board has to hold a hearing. We are endeavouring to reduce the numbers of requests and hearings. If we have only a very general definition, then the board will receive all kinds of requests and they will be swamped, especially in view of the fact that we are dealing with sectors where there is rapid technological change, such as in communications.

Mr. Wilson: We are in the hands of the draftsmen of the legislation who do things, with our help, in what you might call a lawyer-like manner. One of the first objections they would have, if we put it in at this point, would be that you do not need it there.

The other point which you have raised could be looked after, I am sure.

However, when you speak of the number of idle applications, there is always a number of idle applications. Of course, the board will draw up forms and rules of procedure for parties desiring to commence an action under these sections. If they make no other allegations in their paper presentation or application, at least they will have to allege that there are employees being adversely affected. If, in response to that question, they say there are none, I assume the board will tell them, at least in a preliminary way, that they do not seem to have a case but that if they wish to be heard they will be heard.

The Chairman: This is exactly the point: then you will have your hearing.

Mr. Wilson: But it makes no difference whether it is here or there, because they will still have to be adversely affected.

Mr. Robert Mitchell, Director of Legal Services, Department of Labour: Mr. Chairman, even if you changed the definition in an endeavour to bring forward into section 149(1) the effects of the change mentioned in section 152, a frivolous application could still be brought before the board alleging serious adverse effects, and the board would get into the same kind of inquiry and the same procedure would be followed. The same abuse could occur.

Senator Grosart: I would rather doubt that, Mr. Chairman, because if subparagraph (c) were added, which would be one of several improvements which could be made, this would tie the definition down to the effect on job security. Then the board would be in a position to say, "This is not technological change within the definition of the act." The way the act is written now the board is in a position to say that this is technological change.

Mr. Robert Armstrong, Special Assistant to the Deputy Minister, Department of Labour: No, I do not think you are right, senator. I do not think the definition could be severed from section 152, as Senator Martin has indicated. They have to be read together.

Senator Grosart: This is not so. They are severed.

Mr. Armstrong: I defer to what Senator Martin has said.

Senator Grosart: Let us look at it factually. We have had a statement to the effect that you are in the hands of the draftsmen. I sincerely hope this is not the attitude of this or any other department. God help us if we are in the hands of draftsmen. They are there only to give effect to the intent of Parliament.

Mr. Wilson: I wish you would try to get out of the hands of draftsmen, sir. They have a style of doing things and they insist on carrying it through.

Senator Grosart: If I had anything to do with it, no draftsman would insist on telling me what I should do or what I should say.

Mr. Wilson: They do not tell us what to say, but they do insist on following certain drafting principles regarding how to say it.

Senator Goldenberg: I wonder if Senator Grosart is suggesting that it would be more correct to say that it is only technological change if it has an adverse effect on employment.

Senator Grosart: Yes, within the meaning of the act. After all, an act defines its language in relation to itself. It does not mean that it is a definition which will be included in Webster's. Within the meaning of the act it would make a lot of sense to say that "Technological change" under this act must be technological change that adversely affects employment."

Senator Martin: Senator Grosart, you are guilty in the illustration you give of the very defect you complain of in the drafting of section 149(1)(a). Your definition of technological change is no more adequate than that contained in section 149(1)(a). It can only be understood by reference to the remainder of the act.

Senator Grosart: In the first place, I doubt if I am "guilty"; I may be wrong. In the second place, this just is not so. I did not say that by adding paragraph (c) the definition would be made perfect. I said this is one of several changes that could be made to provide a viable definition of technological change.

Mr. Wilson: Would you also include in the definition the fact that the technological change must affect a significant number of employees?

Senator Grosart: Yes, certainly. That is the present wording.

Mr. Wilson: You would then have one section containing both the definition and a substantive provision, whereas it must be broken down in order to arrive at an understanding of its meaning.

Senator Grosart: That does not make sense now. I merely say that the definition should define that what we speak of in the act, which is technological change and its effect. That would provide a starting point for the whole act. I agree with Senator Goldenberg that the operational and other changes should be included in paragraph (C).

Senator Martin: I must say that as Senator Grosart spoke last night I made a point of referring to section 149(1)(a). Reference to that section indicates that in itself it undoubtedly is an inadequate definition of technological change. As I understand it, it seeks to provide a form or process which can only be understood by referring to other sections of the act and, indeed, section 149 itself suggests this. It does not say that this is the section which defines technological change. It provides: "In this section", not "In this section alone". Section 149(1) reads:

In this section and sections 150 to 153, "technological change" means—

Therefore the definition of technological change is contained in this section and in sections 150 to 153. The argument now has been that the only definition of technological change under this act is contained in section 149(1)(a). That is not what is provided by the section. Let me repeat:

In this section and sections 150 to 153, 'technological change' means—

Senator Grosart: It says that in this whole group of sections that is what technological change means. That is exactly right. It applies to this and the other sections.

Senator Martin: Yes, not this section alone.

Senator Grosart: It does not say that technological change means this in addition to provisions of other sections. Its import is that this is what it means.

Senator Martin: No, it says technological change is defined by section 149(1)(a) and sections 150 to 153.

Senator Grosart: With great respect, it does not say that at all. It reads:

In this section and sections 150 to 153, 'technological change' means—

It does not provide that it shall be determined by the other sections. It says it shall be this.

Senator Martin: That is a rule of judicial interpretation. I do not think you can change the meaning of section 149(1), which reads:

In this section and sections 150 to 153, 'technological change' means—

Your quarrel has been with paragraph (a).

Senator Grosart: With due respect, it cannot be with paragraph (a), because (a) and (b) are tied together.

Senator Martin: Yes, I agree.

Senator Grosart: Well, my argument does not quarrel with paragraph (a).

Senator Martin: I think, Mr. Chairman, it must be clear that the definition is not confined to the interpretation of this one section.

The Chairman: No, but I think that Senator Grosart's point is that this is a very general definition, which starts the whole process.

Senator Martin: That is right.

The Chairman: He points out that including this type of definition without any reference to the effects of the technological change may lead to abuse. A labour leader may be forced, if he is also in favour of his own job security, to submit requests to the board simply to take the chance that he can win his case or at least delay any change that he does not desire. He would at least appear to be a great defender of the rank and file if he does not have to contemplate the type of finding at which the board must arrive. I therefore think that it might be much more desirable if the objective of the legislation were included in the definition itself. In that case it would be obvious that a technological change in order to lead to the reopening of negotiations would have to substantially and adversely affect the terms and conditions or security of employment of a significant number of employees. This would prevent many unnecessary requests by labour leaders being submitted to the board.

Senator Martin: Your statement of the case is a reasonable argument, but the answer is that, no matter what is included in section 149(1)(a), it will not preclude vexatious action on the part

of management or labour. The draftsmen of this bill have decided on the device of providing for a meaning of technological change by reference to section 149(1)(a) and (b) in relation to other sections, particularly section 152. It is just a question of decision, and that decision has been taken.

The Chairman: Well, it has not been taken by us.

Senator Martin: No, that decision has been taken by the department, and so on. It seems to me to be a reasonable one. I can understand Senator Grosart's argument, but I do not agree with it.

Senator Lawson: I have two or three comments in this connection. In my opinion, when we discuss the object of the legislation, it is to resolve matters of technological change which adversely affect large groups of employees.

The Chairman: It is to remedy the effects.

Senator Lawson: Yes.

The Chairman: But the effects are not mentioned in the definition.

Senator Lawson: The object is also to attempt to avoid or to minimize the number of labour-management conflicts which exist today in the absence of such legislation. With respect to the definition of technological change, if all year was spent drafting 50 pages, very valid technological changes which should properly come before a tribunal would still not be included. I do not believe that the definition is too general; it may not be general enough. The legislation should not seek to discourage parties from appearing before the tribunal for a decision, but to encourage them to do so in order that there may be a proper and speedy remedy.

The Chairman: Within the ambit of the legislation though.

Senator Lawson: Even if you have from time to time, I think your term was, "vexatious ones" that come by labour leaders trying to do this—I think that is something of a myth. I have always found that workers have an inborn sense of fairness. They know if something is a technological change that is affecting them and that they are being displaced, and they are going to look for a tribunal to settle it, to get a hearing. In 99 per cent of cases, if the hearing is conducted fairly and they are told, "this is the end of the matter; it is not a technological change; you have no right to interfere," they will accept that. I am more concerned that we put so many stumbling blocks in the way that they cannot get there, and they will do just what they are doing now: they will find their own remedy, which will be to fold their arms, sit down, and stop the whole production until some remedy is found.

It seems to me that the whole thrust of the legislation should be to encourage people, to encourage the parties to come and sit down and negotiate, at the appropriate time, their own remedy. It seems to me that there should not be any concern about it being too general; the only concern should be that it is not general enough. We should encourage them to come and they should be heard, because in 1972,

if large numbers of employees are going to be displaced in any way and they do not get a proper remedy, they will find their own remedy, and they will find it very quickly.

It seems to me that the thrust should be to encourage them to come and that they be given a proper hearing. Of six legitimate cases which come before the tribunal, if there are three or four that have no real need to come before them, there would still be a real need. There could be psychological factors involved, of people thinking they are being displaced and that nobody cares and they need a tribunal where they can come and be heard. I think that is what should be encouraged by the legislation, and that is what we should try to make as easy as possible for them.

Senator Grosart: I would not disagree with a word of that, because it has nothing to do with the question before us as to whether this is a good bill, as drafted. I agree with the intent, and with everything that Senator Lawson has said, but that is not my point. I am arguing that it is our task in the Senate to make a bill as precise as possible.

The Chairman: I am afraid that Mr. Wilson has had to leave us for a few minutes. He had an urgent call from Montreal.

Mr. Mitchell: May I give a hypothetical example to illustrate the drafting problem, which may explain why the draftsmen chose the technique they did? I will give you a hypothetical case that I thought of while the discussion was going on. Let us imagine that Parliament wanted to pass an act giving the court the power to destroy a dog that has bitten a human being. There are two ways of setting up that statute. The first is to define "dog" as a canine animal and then give the court the power to order the destruction of a dog where it is proven to the court that the dog has bitten a human being. The other way of doing it—and I think that is the way that is being talked about here—is to define a dog as a canine animal that has bitten a human being, and then give the court the power to order the destruction of a dog.

Either way would work; but in either case the court would have to be satisfied that the animal in question had bitten a human being. The same number of cases would probably be brought before judges under that hypothetical act, no matter which way you chose to do it. The traditional way is to define a dog as being a canine animal and then say that the court has the power to order the destruction of a dog where certain things are proven to the court. Perhaps that is a silly example, but it illustrates the alternative drafting approaches which can be used.

The Chairman: I suppose Senator Grosart wants to avoid bringing all dogs before the court.

Senator Goldenberg: Surely, if a labour leader is going to bring a matter before the board, it will not be enough for him to say, "There is a technological change within the meaning of section 149(1)(a) and 149(1)(b)."—and leave it at that? He will have to allege that the technological change substantially and adversely affects the terms and conditions or security of employment of a significant number of employees.

The Chairman: When a hearing before the board has started.

Senator Goldenberg: No. In his charge he would have to say that; otherwise he would be a fool, and I do not know of any labour leaders who are really fools.

Mr. Armstrong: There is an additional point which Senator Goldenberg made very well last night, but which has not been mentioned this morning. It is that there are three distinct avenues or exits from the formula right at the beginning. The intent is in accord with what Senator Lawson has said. While people may go to the board to have their rights ascertained, which is a reasonable principle, the legislation is framed in such a way—and it is a change from the earlier Bill C-253—as to encourage the parties to reach their own general agreement. If they do that, clearly there are three different ways—

The Chairman: We are dealing with the compulsory element of the legislation and not with the permissive element.

Mr. Armstrong: —and the balance of the formula will not apply. That point was made last night.

Senator Grosart: That has nothing to do with what we are discussing.

Mr. Armstrong: Yes, it has, in this way: we do not envisage that a large number of cases will get to the board.

Senator Grosart: The point is that our business is to prevent one misapplication of the act.

Mr. Armstrong: I think that is everyone's business. One cannot avoid people suing, taking action in the courts, for a variety of reasons. One cannot avoid that.

Senator Grosart: The fact that there are exemptions under the act has nothing to do with the argument. But the one place where there is no exemption may not be desirable legislation. That is my point. Everybody hopes that at the time of the original bargaining there would be complete disclosure of technological change in intent, and so on.

The Chairman: I am sorry, but I do not share your optimism, because I feel that as a result of this legislation unions, instead of trying to avoid, at the moment of the negotiation of the main contract or agreement, getting satisfactory provisions dealing with the effects of technological change, under the new bill they will be discouraged from doing that. Why should they become prisoners before the fact when they know that later on they will have a wonderful opportunity if they do not have such provisions in the main contract, to reopen the whole thing? If I were a labour leader—I know some of them and I have been involved in labour negotiations, and also labour fights, always on the labour side—I would never, with that kind of bill, agree in advance to any kind of procedure for a technological change that I did not get to know. Instead of providing an incentive for the parties to agree on procedures to deal with the effect of technological change when discussing the question of contract, I think it is a disincentive.

Mr. Armstrong: That assumes, Mr. Chairman, that nothing will take place in the bargaining and that the employers will not, in the light of the legislation of post-legislation, protect themselves by giving notice, for example. One must not assume that this subject will not be the background for subsequent bargaining. I think that it surely will be, and that employers will protect themselves by giving as full notice as they can.

Senator Lawson: To put your mind at ease, Mr. Chairman, in addition to those remarks, almost without exception every employer or trade union leader that I have been associated with would much prefer to rely on their own devices than to rely on any government tribunal of any kind. I think you will find that the overwhelming majority of disputes are resolved by the parties directly, as opposed to the parties relying on any tribunal.

The Chairman: If they want to so limit their powers, that is a surprise to me.

Senator Goldenberg: Mr. Armstrong made an important point which I myself intended to make. The employer gives notice. If the union does not want to agree, then there will not be an agreement.

The Chairman: That is exactly the point. For example, if you have a three-year contract between the Bell Telephone Company and its employees—and you know very well that there are a lot of technical changes taking place in the field of communications—the company itself may not know what technological changes it may want to introduce two years from the signing of that contract. I do not think that this deals with the point I have in mind. Not even the union would know, so why should they bind themselves by a limiting procedure when they have this wide open opportunity to reopen the entire contract to negotiations, including not only the aspect dealing with the effect of the technological change but with respect to wages, hours of work, and so forth?

Senator Goldenberg: No, Mr. Chairman, that is not correct. If you read section 152(1) you will see that they cannot reopen the whole contract. I will read that section into the record. It reads as follows:

Where a bargaining agent received notice of a technological change given by or in respect of an employer pursuant to section 150, the bargaining agent may, within 30 days from the date on which it receives the notice, apply to the Board for an order granting leave to serve on the employer a notice to commence collective bargaining for the purpose of revising the existing provisions of the collective agreement by which they are bound that relate to terms and conditions or security of employment, or including new provisions in the collective agreement relating to such matters, to assist the employees affected by the technological change to adjust to the effects of the technological change.

That certainly restricts any reopening of the whole contract. That is very clear. I cannot see any other possible interpretation. I have heard it said that they can reopen the whole contract and renegotiate wages, but that is incorrect.

The Chairman: Is this your interpretation, gentlemen?

Mr. William Kelly, Assistant Deputy Minister, Industrial Relations, Department of Labour: Yes, Mr. Chairman.

The Chairman: They will only have the right to reopen negotiations on the effects of the technological changes?

Mr. Kelly: Yes, Mr. Chairman.

The Chairman: And that is for the employees who are directly affected by the technological change?

Mr. Kelly: Yes.

Senator Goldenberg: That is the only interpretation I can see.

Senator Grosart: Mr. Chairman, I can see another interpretation. It is not for me to suggest what the courts might do if this matter went before the courts, but I suggest it is ambiguous. It says:

... for the purpose of revising the existing provisions of the collective agreement by which they are bound that relate to terms and conditions or security of employment,—

That is one part. It continues:

or including new provision in the collective agreement relating to such matters, to assist the employees

Senator Goldenberg: Just a second. There are two commas there.

The Chairman: Commas are important.

Senator Goldenberg: I noticed last night that Senator Grosart in discussing the definition read section 149(1)(a) without reading section 149(1)(b). He is now reading section 152 to suit his own purpose. I think he should read it with the commas—

Senator Grosart: Mr. Chairman, on a point of order, I must object to being told that I am reading it to suit my own purpose. We are in a committee of the Senate here.

Senator Goldenberg: I will withdraw that remark.

Senator Grosart: In the second place, I had not finished reading. I paused and was about to say there is then the word "or". Whether the last three lines are tied to the new provision or to the earlier part, I do not know. I say it is a matter of interpretation. Senator Goldenberg says there is only one interpretation. I suggest, even if I am the only one who sees the other interpretation, that there are at least two.

The Chairman: Your suggestion, Senator Goldenberg, is that it applies to both?

Senator Goldenberg: Of course it applies to both.

Senator Grosart: Well, who says, "of course"? One thinks it applies to both; I do not think it does.

Senator Goldenberg: I may be arrogant this morning, Senator Grosart, and I apologize, but I was called to the Bar 40 years ago this morning.

Senator Grosart: I was born 65 years ago.

Senator Martin: And you both ought to have more sense.

Senator Lawson: Mr. Chairman, may I ask a question of our experts?

Where it says,

... or including new provisions in the collective agreement relating to such matters, to assist the employees affected by the technological change to adjust to the effects of the technological change,

this might apply to the manufacturer or fruit canning operation where technological change replaces X number of employees. There is nothing in this to prevent the union from negotiating a tax per case or per can to establish a fund to retrain these people. So when you are talking about a wage increase, it might be a higher cost to the employer but not necessarily an hourly wage increase for the employee. You could establish a fund of that nature?

Mr. Kelly: Or a retraining program, and that would be a matter of whether it is funded by the operation or not. It is to ameliorate the adverse effects of the technological change on the employees affected.

There is another point I should like to make with respect to the definition and whether frivolous cases could come before the board. It is in reinforcement of the comments made by Senator Lawson. Some of the experiences we have had with wildcat strikes—and that is what they are—show us that they are as a result of the parties having no place for any kind of a hearing. There was a very serious railway strike in this country where 2,800 employees booked off sick at Nakina, Ontario, and Wainwright, Alberta, and were tying up the whole system. The union leaders were crying to get to arbitration, but it was not arbitrable. There was nothing in the collective agreement dealing with run-throughs or technological changes. Possibly it is better to have the odd frivolous application to the Canada Labour Relations Board than to have these types of incidents tying up the economy.

The Chairman: What would be the industries covered by this legislation?

Mr. Mitchell: I do not have a list with me, but I can recite the main ones from memory. It will cover almost all of the railroads, interprovincial transportation by truck or motor coach—buses and that type of thing—radio and television stations, banks—

The Chairman: So far as they are unionized?

Mr. Mitchell: Yes. They are not yet unionized, but they can be. There is nothing to prevent it under the law.

Senator Smith: The uranium industry?

Mr. Mitchell: Yes, uranium and also interprovincial shipping and air lines. Those are the main ones.

Mr. Armstrong: Senator Goldenberg prefaced his remarks last night with a long list.

The Chairman: Senator Goldenberg, what was it you said about government employees?

Senator Goldenberg: I said the Canada Labour Code does not apply to employees of government departments, boards or commissions because they are subject to the Public Service Staff Relations Act, which is an entirely different act, with a different board and different provisions.

The Chairman: Is there any provision there for technological change?

Senator Goldenberg: No, not as far as I know.

The Chairman: So the government sees to it that its own employees are not covered by this bill.

Mr. Kelly: I understand the legislation is under review.

Senator Smith: I never understood that the employees in the Public Service had too many worries about security of employment.

The Chairman: With the advent of computers, and so on, technological change can have an effect there, I presume. Is there any good reason for this?

Mr. Kelly: I think the point has been made that it certainly has not been the policy of the government to have mass layoffs of government employees where there has been the introduction of technological change.

The Chairman: Would postal workers be covered?

Mr. Kelly: No, postal workers would not be covered by this bill, but the demand for this has come from the private sector, where there are mass layoffs, where contracts made on one set of assumptions can be almost declared null and void by the introduction of technological change. I know of no occasion when the government has engaged in any kind of mass layoff of their employees, even where technological change is introduced; they are absorbed in other operations.

The Chairman: Is it not true that there have been a number of difficulties in the postal service over technological change?

Mr. Kelly: Yes. While we are not familiar with the bargaining at the moment—it comes under the Public Service Staff Relations Act—one of the prime demands, I understand, is job security, and it might well be they could negotiate, in their collective agreement, job security provisions far superior to any that could be provided through this bill.

Senator Lawson: If they are unable to do so, there is no way the provisions of this bill could be extended to them?

Mr. Kelly: There is no way.

Senator Lawson: There would have to be a separate amendment to the Public Service Staff Relations Act?

Mr. Kelly: That is right.

The Chairman: So they are not covered merely because they have not asked for it?

Mr. Kelly: No. They do not operate under this act. They operate under the Public Service Staff Relations Act.

Senator Goldenberg: It is not the Department of Labour that is involved; it is the Treasury Board.

Senator Grosart: Senator Goldenberg made some remarks last night about the construction industry. If my memory serves me well, I think he said that perhaps some other legislation, or other arrangements, might be necessary to cover problems in the construction industry. Is that so, Senator Goldenberg?

Senator Goldenberg: Yes. I was not recommending this as a perfect bill. I said I was sure that in due course there would be improvements. As an example, I said that, based on my own experience, I think there will have to be special provisions for the construction industry in due course. It is a different kind of industry, and it applies to construction in the Northwest Territories where they come under federal jurisdiction. This was by way of example of further changes that I expect will be made. I do not think everything can be covered at one fell swoop.

Senator Grosart: What would be the specific problems in the construction industry in the Northwest Territories or elsewhere under federal jurisdiction? What would be the problems in respect of this bill? Where would it be inadequate?

Senator Goldenberg: Mr. Chairman, if I am going to embark on that, might I say that I edited a 700-page book on the subject, published in 1969.

The Chairman: You can send Senator Grosart a copy.

Senator Goldenberg: I would be glad to send Senator Grosart a copy. It is a very long and involved subject.

Senator Grosart: I am behind in my reading.

Senator Goldenberg: I will bring you up to date.

Senator Grosart: I would suggest to Senator Goldenberg that it may be important to know his views on this, because if there is an inadequacy in this bill, now is the time to have an indication of it from an expert such as Senator Goldenberg.

Senator Cameron: In listening to this discussion I am wondering how long we will go on having large segments of the labour force operating under so many different acts. This is a case in point. They are talking about going on strike again because of technological change. You say this bill does not apply to them. I realize that. However, is it not time something was done to try to bring them all under one umbrella? Can this be done? If not, why cannot it be done?

Senator Goldenberg: My understanding is that the Public Service Staff Relations Act is now under consideration. A report was made by a committee of three, chaired by John Bryden, I think, of New Brunswick. I would assume that the recommendations are being considered and will be acted upon in due course. Meanwhile, the postal workers are negotiating and, while I have no inside information, I am sure that one of the problems they are negotiating is the impact of proposed technological changes.

Senator Grosart: Are you going to tell us about the construction industry?

Senator Goldenberg: I do not think I will talk about the construction industry now. I am sure Senator Grosart does not want to sit here for the rest of the summer. However, I will send Senator Grosart a report that I made as a royal commissioner to the government of Leslie Frost, who acted on it.

The Chairman: Could you describe for us the provisions in the American legislation dealing with this problem?

Mr. Mitchell: The Americans do not have any particular legislation dealing with technological change. They have a different legal framework. Their law, for example, does not prohibit strikes or collective bargaining during the course of a collective agreement. What we have had to enact into legislation to achieve they have as a matter of right anyway. It is true that a trade union and an employer may agree that there will be no strike during the course of a collective agreement. In fact, a large majority of American agreements have such a clause in them. That clause is negotiable at the time of making every new agreement, and may have to be agreed upon all over again at each collective bargaining session. They have a technique built into their law to handle that problem, if and when it becomes a problem at the plant level.

The Chairman: It is only permissive; there is no compulsory aspect to the legislation?

Mr. Mitchell: That is right. They have the right to negotiate during the life of an agreement unless they contract out of the right.

The Chairman: On any aspects of the contract?

Mr. Mitchell: On any aspect at all.

Senator Lawson: It might be of interest to point out that our national freight contract in the United States covers some 450,000 people, and flowing from that agreement we have established state grievance panels in every state, and then we have a national grievance panel. If the panel deadlocks on agreements and reports

that there is no resolution to it, they have the right to strike in support of agreements, which may be for technological change, or organizational change, where they re-route trucks, or put on sleeper cars in place of freight trucks, or introduce new types of equipment. If they cannot settle it through the panel at the various state levels on a regular basis, they have the right to strike during the life of the contract.

The Chairman: I was told some years ago, when we had the firemen's strike, that it had been inspired by American unions here. If they had no problem in negotiations in the States, why did they try to get this kind of issue settled in Canada first?

Mr. Kelly: Perhaps I could comment on that. If it was inspired, it is significant that the first notice served to remove firemen from diesel engines was in Canada. The commission hearings were participated in heavily by the American Association of Railways. If that notice had been served in the United States, then under section 6 of the United States Railway Labour Act the unions would have served notice, not of a technological change but of a change in working conditions, and they would have had the right to strike. The railways in the United States are covered by a separate act, and if there is any change in conditions that had not been bargained on before the union served the notice under section 6 of that act, they acquire all the rights of bargaining, including the right to strike.

In Canada, as opposed to that, we have the stability of the term contract, and one of the problems that has brought this legislation on is that we have found that we cannot continue to have the stability of that term contract where the set of assumptions under which the contract has been drawn can be changed overnight by a technological change.

The Chairman: What would be the situation in Sweden, Germany and Switzerland, for instance?

Mr. Mitchell: I do not know, but I would like to talk about some I do know. In the United Kingdom today it is open; they can strike over anything; they can walk off the job on the slightest provocation. However, under the latest amendments to their legislation, they too can agree not to strike during the course of a collective agreement. But as a matter of general law, they may strike at any time. So far as Sweden, Germany and Switzerland are concerned, I cannot answer that at the moment, Mr. Chairman, as I have not the material with me.

Mr. Armstrong: In France, the right to strike is virtually part of the constitution, I understand. It is a very broad based right.

Senator Goldenberg: At any time.

Mr. Mitchell: Canada is the only country I can think of offhand that prohibits strikes during the life of a collective agreement and closes the agreement. None of the terms are negotiable, unless the parties mutually agree that the terms are negotiable.

The Chairman: Honourable senators, I am very interested in this type of legislation, but you can always interrupt me when you wish to raise any question at any time, and I am at your disposal. Is there any country which has attempted to protect all workers, including

those who do not belong to a union, against the adverse effects of technological change?

Mr. Mitchell: The answer is yes. Canada, for one, has done so, by its unemployment insurance legislation.

The Chairman: In the way in which we are dealing with the unionized workers now in this bill?

Mr. Armstrong: Perhaps not in specific terms, but I think the clear inference is that in the other systems it is not as compelling, because there is a recourse that does not exist here. So one needs to be rather careful about making these comparisons.

Mr. Mitchell: This argument about reopening a contract, and having the right to strike during the term of a contract, could only occur in Canada; it could not occur anywhere else. They would not understand what we were talking about if we told them we had this problem.

Mr. Armstrong: There is the American system, where one had the authority to act under a contract.

The Chairman: What about in the American system, if there is no union?

Mr. Kelly: It would be hard to cope with that question. If there is no union, the remedy would lie with the individual, who would have the right to withdraw his service certainly in protest; but the remedy lies in collective action.

The Chairman: Surely, it would be possible to provide that an individual who is not a member of the union could have the right to, let us say, compulsory arbitration, if he loses his job or is demoted as a result of a technological change? Let us take banks, for instance, in Canada.

Mr. Kelly: But the scheme of the legislation leaves the making of the bargain to the parties, whether they are unionized or not; and the remedy really, if they were not satisfied with the conditions of the technological change, would be, I suppose, to unionize and exercise the collective right.

Senator Grosart: Mr. Chairman, I do not understand the statement or the implication of the statement just made, that Canada is the only country in the world where a contract is not enforceable at law.

Senator Goldenberg: No, no; it cannot be reopened during its life.

Senator Grosart: Well, that means, if it is enforceable, it cannot be reopened. If it is enforceable at law it is a contract, an agreement. Why do you say Canada is the only country in the world where this does not apply? Why except Canada?

Mr. Mitchell: What I meant, senator, was that Canada is the only country where a collective agreement, once entered into, is binding

during its term and cannot be renegotiated during its term, except by mutual consent.

Senator Grosart: Does that not apply to any contract? Is this not a contract between two parties and has it not legal force? I am asking you, has it not legal force?

Mr. Kelly: The difference in the contract in the United States is that a contract is for a set term on the conditions that are outlined in that contract; but if another matter comes up—let us talk about run-throughs, or the diesel firemen issue or anything else that is not covered in that contract—that is something new.

Under Canadian law, to date, that could be changed entirely. You could have a work force of 10,000, and by certain technological changes it could be reduced to 500 and there is no right to bargain over this.

Senator Grosart: There is still the right to negotiate another contract, an auxiliary contract.

Senator Goldenberg: No, no.

Mr. Kelly: Not today, in Canada.

Senator Grosart: There is nothing in our law that prevents two people sitting down any time—

Mr. Kelly: By mutual agreement.

Senator Goldenberg: If they both agree, but that is very different.

Senator Grosart: I am sure we want to get away from this, but I must say that what concerns me more than anything about this bill as written, on the point you raised, is that it will completely discourage the inclusion in a collective agreement of any undertaking on both sides in respect to possible technological change. I refer particularly to section 149(2)(b), where there is an exemption:

(2)(b) the collective agreement contains provisions that specify procedures by which any matters that relate to terms and conditions or security of employment likely to be affected by a technological change may be negotiated and finally settled during the term of the agreement;

I say this bill surely makes it almost impossible for any bargaining agent, any union leader, to agree for one moment to include any anticipated technological change in that collective agreement. Why should he? It would be much better under the new act and refuse to include technological change in the collective agreement because if it happens later he can re-open the contract in that respect.

Senator Smith: No.

Senator Lawson: Mr. Chairman, I think Senator Grosart is not giving much credit to the unions involved. The examination of many agreements under federal jurisdiction shows they already provide for

technological change, or remedies, or severance pay procedures or other procedures.

Senator Grosart: Not in this act.

Senator Lawson: The legislation is not in advance of what is happening in many of the contracts. The legislation is behind them. Some of the unions, even in anticipation of what may be happening, have clauses covering what happens in the event of a wage freeze being imposed. I do not think that Senator Grosart is as familiar as perhaps he should be with what is taking place. I think exactly the reverse of what Senator Grosart is concerned about is what will happen, that it will encourage the coming together both by management and by trade unions. Trade unions and management are mostly insisting on such provisions, and the fact that management and industry are going to be faced with a tribunal which is going to impose a decision or make rules, means that they will be more encouraged to meet directly with their bargaining agent at the appropriate time and negotiate the appropriate remedies in the collective agreement. It is quite the reverse of discouragement that will take place.

Senator Grosart: Senator Lawson, before you go on, do you really think that it is possible or that it is likely that any bargaining agent will agree to throw away, by prior collective agreement, the power that he is given under this act now to reopen it at any time?

Senator Lawson: Oh, yes.

Senator Grosart: Why would he throw it away?

Senator Goldenberg: Because he will not trust the Canada Labour Relations Board or any other outside body.

Mr. Kelly: Could I answer that? The railways, for example, have very complete job security provisions covering technological change, operational change, organizational change; and they go down not to "a significant number of employees" but to one employee. If one man is affected, they are operational. They would not be inclined to throw that away or to take the chance that the Canada Labour Relations Board might call it a technological change, might consider that it affected a significant number of employees adversely. They would not want to throw away what they have in their contract on the gamble that out of a work force of 100,000 the board might make the determination that 300 men did not comprise "a significant number."

Senator Lawson: I would want to answer Senator Grosart by saying that I think that this would encourage both sides to meet the responsibilities in direct negotiations, and that both sides would have far greater confidence in their own abilities to deal with each other—both being very knowledgeable on the issues—than in any outside agencies doing it for them. I think, yes, Senator Grosart, that it will do precisely that.

Senator Grosart: If that is so, then you do not need the Act.

Senator Lawson: The key phrase you miss, Senator Grosart, is that if there is no escape, then they are encouraged to meet their

responsibilities. Well, this legislation makes sure that there is no escape. Either they meet together and resolve their differences by people knowing what it is all about, or they have to face the penalty of a tribunal that will make decisions. If there is no escape, they will, in my experience, meet together and work out their differences.

Senator Grosart: Would it not be much more sensible to insist that the collective agreement contain provisions in respect to technological change?

Senator Lawson: I think it would be a very desirable feature of the legislation to make it a provision that every collective agreement "shall contain a provision for the satisfactory solution of technological change."

Senator Grosart: That is precisely why I think it is a bad Act; it does not do that.

Mr. Armstrong: Most employers do not agree with that.

Senator Lawson: I do not think you would find most employers agreeing.

Mr. Kelly: Certainly, the CMA does not.

Senator Lawson: I would be happy to draft that during the lunch hour.

Senator Grosart: You propose it as an amendment, and I will second it.

The Chairman: Honourable senators, I am happy to see that the minister has arrived. I understand he will not be able to stay with us very long owing to other important obligations he has these days. I certainly welcome him on behalf of the committee.

Hon. Martin O'Connell, Minister of Labour: Thank you, Mr. Chairman. I am delighted to be here. I apologize for not being able to be here at ten o'clock, when you wished to convene. It is only because of the rather exceptional circumstances in which we all find ourselves today with respect to the ports of Montreal, Trois Rivières and Quebec City that the government is meeting this morning to consider its course for this afternoon. Once again I must say that I am sorry I was not able to meet with you at the beginning of your meeting this morning, but I will be happy to try to answer any questions you may wish to put to me.

I am pleased to see the officers of the department here. I am sure you will get both good and substantial answers from them. They have been at this particular matter for well over a year now.

The Chairman: Thank you, Mr. Minister.

Senator Lawson: Mr. Minister, I was going to ask one question of Mr. Kelly. I want to make sure we understand the impact of the example Mr. Kelly gave us a few moments ago. Did I understand correctly that, under federal jurisdiction now, if your 10,000 employees were reduced to 500 employees, so long as they were an unorganized group they would have no remedy whatever?

Mr. Kelly: There is no remedy under this act.

Senator Lawson: You could have 9,500 employees displaced by the introduction of technological change and they would have no remedy whatever?

Mr. Kelly: That is correct.

Senator Lawson: The only salvation would be—and I hate to say it!—for them to become members of a trade union.

Mr. Kelly: Yes.

Senator Smith: You hate to say that?

Senator Lawson: Yes, but I am forced to that conclusion!

Hon. Mr. O'Connell: Perhaps you should not use the word "remedy". They do have some forms of protections. Those are found in another portion of the Canada Labour Code. I refer to labour standards, where there are matters with respect to termination notices, group lay-offs, severance pay, and so on. So there are standards that protect employees, whether in a union or not, but this bill applies only to those who are represented by a union.

Senator Grosart: Mr. Minister, earlier we referred to section 152(1), which provides for the reopening of negotiations by order of the board. Is it your understanding, in such a reopening of the original collective bargaining agreement, that it would apply only to the technological change?

Hon. Mr. O'Connell: Yes.

Senator Grosart: Will that be incorporated in the regulations? Will that be made clear?

Mr. Wilson: It is clear here.

Senator Lawson: It is clear in the law now.

Senator Grosart: It is questionable whether it is or not. I am asking the minister.

Hon. Mr. O'Connell: I do not think it will be in the regulations, if that is the question, sir. Mr. Chairman, I think it is clear enough in the provisions that they deal with technological change, and the reopener would be confined to that matter.

Senator Grosart: If the board were to interpret it differently, Mr. Minister, what would happen? For example, if the board interpreted section 152(1) as permitting an order to reopen the whole collective bargaining process, would it be within the power of the board to do so under the act in accordance with that interpretation?

Mr. Mitchell: If I may, I will try to answer that question, Senator Grosart. We were very careful—at least, we tried to be very careful—during the drafting process to make certain that the right to

reopen would be restricted to the effects of the change, and we think we have accomplished that. If the board were to misinterpret the section and give a more general right to bargain, then I think that the minister would want to take steps in Parliament right away to get that situation straightened out. At the present time we have to advise the minister that the right or the power of the board to reopen an agreement is limited to that stated in the last three lines of subsection (1).

Senator Grosart: Who is "we", and how would you advise the board?

Mr. Mitchell: Well, the board will be an independent body, a separate body, independent from the department. When I say "we," I speak of the officials in the Department of Labour. We were responsible for drafting this bill.

Senator Grosart: And you are responsible for advising the board as well?

Mr. Mitchell: No, we are not.

Senator Goldenberg: This is an independent board, and I think we should make that point very clear. I do not think Senator Grosart would expect the Department of Justice to advise the Supreme Court of Canada on how to interpret the law.

Senator Grosart: That is exactly what was said, that "we would advise the board if they misinterpreted." Those were the exact words.

Mr. Mitchell: I do not think so, senator.

Senator Goldenberg: I do not think so. I think what was said was that we would advise the minister to introduce new legislation.

Senator Grosart: I think that is right, because it would be none of your business if the board interpreted it that way.

Mr. Mitchell: If I said that, I am sorry, senator.

The Chairman: I think the witness said that they would advise the minister.

Mr. Mitchell: If I said anything else, I did not mean it.

Senator Connolly: Suppose there was a misinterpretation on a point of law by the board, does an appeal lie to the courts from that decision?

Mr. Mitchell: An appeal would lie to the Federal Court.

Senator Lawson: I have a couple of questions, Mr. Chairman. For the first one, I turn back to page 3, to where it says that "dependent contractor" means:

(a) the owner, purchaser or lessee of a vehicle used for hauling livestock, . . . who is not employed by an employer but who is a party to a contract, oral or in writing—

Does this act contemplate the right of a trade union to certify that group of people?

Mr. Mitchell: Yes.

Senator Lawson: Even though they are not employees?

Mr. Mitchell: Yes.

Senator Lawson: And in certifying this group of people, the trade union would be able to bargain with the contractor that they hold a contract from but are not employees of?

Mr. Wilson: Yes. Just as they do now for all the drivers that your organization has been certified for.

Senator Lawson: It is like musical chairs in that every month we get a different ruling.

Mr. Wilson: That is because they are different independent contractors.

Senator Lawson: I know, but that depends upon the skill and the imagination of the employers involved, and they display considerable skill and alacrity in the way they handle this.

Mr. Wilson: Of course, if they make them completely independent, then they will not be dependent contractors.

Senator Lawson: So they can escape the provisions of this legislation as well.

Mr. Wilson: Yes, by making them completely independent, but then it would not serve the purpose of their business to do that.

Senator Lawson: I shall direct my second question to the minister. Regarding the composition of the board contemplated here, will this be a public board? I am concerned about the selection of the people named to the board. First of all, it would be a full-time board?

Hon. Mr. O'Connell: Yes.

Senator Lawson: And, secondly, in regard to the formula you use for nominating people to the board, will there be X number of labour and X number of management with some Congress people, et cetera?

Hon. Mr. O'Connell: We are already engaged in some consultations with people knowledgeable in the labour, management and judicial fields and academic circles, seeking suggestions from them as to persons qualified to sit on this kind of board. We certainly intend to consult very extensively with labour and management, and I think there is no doubt at all that people will be drawn from different backgrounds in order that their experience will be available to that board. I do not have any particular formula in mind like three of one and three of another, or two of yet another, or anything like that, but the board must gain credibility, and I am sure it will have that. It must gain the acceptance of both

parties to collective bargaining and, therefore, they will want to feel assured that there are people of good judgment in there; and it will be in our interest to make sure that they feel that way. I think we will be drawing people not only from a union background but also from a management background, and also others who are, shall we say more neutral. But it will not be in a formula sense.

Senator Lawson: As you know, under the present structure we have had considerable complaint that the make-up included one or more from the railway brotherhood and one from the Canadian Labour Congress, but that independent organizations like the CNTU and others across the country were not represented. The complaint was repeated many times that they were not receiving and could not receive a fair hearing.

Hon. Mr. O'Connell: Well, we would share that concern, but the situation will be different in this sense, that the present labour board is in fact a representative board and, of course, people are concerned about the representativeness of a representative board. It has part-time persons who are still performing functions in their, let us say, railway union or management role. So that the problem as to how representative is that representative board becomes, from time to time, a question when they are turning in judgments. But we try to surmount that question of representativeness, or at least to modify it, by having a full-time public board where the members must sever their connections with the place from which they may have come, whether they have been in a trade union or in management or a judicial or other kind of role, so that they are no longer representative of the CNTU or the Congress in the sense that the present board is. But the parties would want to feel assured, nevertheless, that the persons there would have the feelings and judgments that would enable them properly to reflect the positions of both parties and the public interest.

Senator Lawson: I take great comfort in your answer, Mr. Minister. One final question. Will the board be only in Ottawa or will it be established and domiciled here?

Hon. Mr. O'Connell: That would really be for the board to determine, as I understand it. Mr. Wilson might modify that or add to it.

The Chairman: I think there is a provision that it could travel, but it should be domiciled in the national capital.

Hon. Mr. O'Connell: I think it could meet in a couple of panels if it so desired.

Mr. Wilson: We will see that it gets out to the west coast occasionally!

Senator Lawson: There have been problems for those who have come before the board in that in one month you would have a technical objection and then there would be a delay for another month; and sometimes we have had anniversary parties without having yet had a decision.

Mr. Wilson: Well, with panels the board would be able to cut down on this kind of thing.

The Chairman: This is exactly what I am afraid of, that the workers may have to wait a long time to get their compensation, and that the employers will have to wait a long time to introduce a technological change.

Senator Lawson: But if it was a full-time board it would change the whole aspect of this. And I think the key to any legislation of this kind is speedy decision to avoid serious complications and problems. I think having them meet on a full-time basis is a giant step towards solving this problem.

Mr. Wilson: I do not know whether their decisions will be any speedier. The present board is pretty quick in most cases—except the kind of cases you sometimes give them, senator. But I think the board will hear its cases because it will not be scheduling meetings, for example, every third or fourth week. They will be able to hold a meeting any time that they can arrange a hearing.

The Chairman: But as a result of this legislation they will have much more work to do.

Mr. Wilson: Probably.

Senator Goldenberg: Not necessarily. I do not think so.

Hon. Mr. O'Connell: Mr. Chairman, sections 114 and 115 provide the answers, I think, to Senator Lawson's questions. Section 114 says that:

The head office of the Board shall be in the National Capital Region... but the Board may establish such other offices elsewhere in Canada as it considers necessary for the proper performance of its duties,

And subsection (2) says that they may meet for the conduct of business in various places in Canada. Then section 115 says that three members may constitute a quorum, so it is contemplated that they could sit in various places as panels.

Senator Goldenberg: So it is up to Senator Lawson to make sure now that British Columbia stays in Canada!

Senator Hastings: Mr. Minister, in our discussion of the bill last night an observation was made that the enactment of sections 149 to 153 would have a detrimental effect with respect to technological progress and would thereby have a detrimental effect with respect to job security. It was further suggested that the thrust or the emphasis should be concentrated on the massive training or retraining program. Would you care to comment on the first part? And then, from our experience have we not found that there is an age when retraining becomes totally impractical, with negative results?

Hon. Mr. O'Connell: Yes, Mr. Chairman, I think that as we look back through the decades of history we find that a good deal of labour unrest surrounded the introduction of technological change. If you go back to the beginning of the Industrial Revolution it is quite evident that riots topped off the unrest which came as a result of the introduction of new machinery, and people were displaced

whose livelihoods had been built around other processes and equipment. We are obviously in a phase of economic and social development which your chairman has often described as being permanent or continuous change. It is an area of very explosive technological change. We find that a good deal of labour unrest, with resulting strikes and bargaining, takes place around the issue of job security and job security as it relates to concern over the effects on the workers and their dislocation, their displacement as a result of the technological change.

We have felt that it would be the intelligent and practical thing in this age of change to encourage bargaining over those effects; and there are considerable inducements in this bill. In our view, it will facilitate the oncoming of the change. This is probably a debatable point and it will take a little experience to help us determine whether we have made the right judgment. We think we have. If we bring it on to the bargaining table, the employer can introduce the change along with its benefits at the same time, and the employees are more likely to accept it, having bargained to protect themselves to the degree which they felt feasible.

So, in answer to your first question, I feel this is a constructive means of dealing with the issue which, in the minds of many observers of labour-management relations, has become a dominant issue in collective bargaining, and especially around the issue of job security. We have seen major employers introduce provisions and procedures for dealing with this matter and we have seen constructive results. So, we have some background in this field.

Mr. Chairman, the other point which was raised concerns retraining. Some few years ago very significant programs, legislation and policies were introduced by the government with respect to manpower development, retraining, relocation and mobility. I think these matters are surely the other side of this question. Quite apart from the arrangements it encourages among two parties to any given enterprise, the state has an obligation to cushion or facilitate the changes in the economy while ameliorating the effects on the community, on groups of people and on individuals. It does this through mobility programs, manpower training, relocation programs and, most recently, the training-on-the-job program. I think the two things must run parallel. No doubt we will improve in light of our experience in retraining and mobility.

The Chairman: Would you say that this aspect of the government program is recognition of the fact that technological change entails not only private benefits but also social benefits, and the burden of compensating for the adverse effects of technological change should not be exclusively in the hands of the innovative firm? Otherwise, we might not have many innovative firms. We know that in some areas of this country a great number of workers are losing their jobs precisely because firms have not been innovative and have had to close down because they are not competitive.

Hon. Mr. O'Connell: That is right.

Senator Hastings: But have we not found from experience that there is an age at which retraining programs are impractical and have had a negative result, especially between the ages of 38 to 44?

Hon. Mr. O'Connell: I would have thought the problem of retraining would arise at an older age. However, the difficulty may

relate more to the pedagogy and techniques which are being used rather than to the age of the individual. This is an area where we have to improve our performance.

Some industries have introduced new schemes for early retirement—for example, the textile industry and the boot and shoe industry. They have pre-retirement schemes. We are working our way into the issue regarding middle-aged workers who need special cushioning. I agree with your chairman that there is a need for society as a whole.

The Chairman: They may have to do this soon in the pulp and paper industry as well.

Senator Cameron: Mr. Chairman, it seems to me that this bill is one of the first which is on the fringe of what we might call social innovation. However, there seems to be a basic contradiction here. On the one hand, in order for manufacturing companies to be competitive we must introduce every possible technological change, which means we will displace more and more labour. We must do this in order to survive if we say that technological change is a good thing. And this suggests that if we are going to do this, we have to go further and provide for the ameliorating effects of the change, and we are only beginning to do this. It seems to me this whole area has to be tackled on a much more fundamental basis than we have done so far. For example, the Minister of Finance brought in a budget last May in which he made certain concessions with regard to encouraging more manufacturing and providing more jobs, which everyone agrees is a desirable objective.

I feel satisfied that, while the legislation may be good, it will not achieve the purpose the minister had in mind, because the full thrust of technological change is against it. We now have this act related to the budget, and it seems to me there is a need for a much greater fundamental change.

Hon. Mr. O'Connell: There is certainly a great deal of truth in what appears to be a contradiction between seeking to increase employment and facilitating changes which create unemployment. When an enterprise introduces a technological change a number of employees are sometimes displaced because of it. This is not always the case, because larger firms normally find it possible to retrain or relocate employees within the enterprise to carry out other work which tends to be created as the firm expands. It is an innovative firm and finds room for those who are displaced. Considering the enterprise itself, there does appear to be that contradiction. However, the entire innovative economy seems to provide an increasing number of jobs, often in areas which have not yet been fully foreseen. We have witnessed the increase in employment in the area of medical services. I am amazed at the number employed in a hospital. There has been expansion in the educational field.

The Chairman: We have also seen the cost expanding.

Hon. Mr. O'Connell: We have seen the cost expanding but, from the point of view of employment, an innovative and mature economy seems to create new job opportunities as rapidly as it displaces workers from other sectors. The leisure industries may be the next to absorb people. Therefore, the apparent contradiction at the level of the firm may be resolved at that of the overall economy. It becomes a matter then of mobility of the work force. That is a

difficult problem to overcome because immobility increases in one who works in the same community for a long time. Retraining is crucial and financial assistance to relocate and cushion shock are important when the economy is altering the balance from standard manufacturing of goods to the production of services.

We are aware that our economy creates new jobs at a very rapid rate, although unemployment rates are very high and some will continue to be displaced. During the last five years we have seen the employed labour force increase from approximately seven million to eight million.

The Chairman: Is there another contradiction, such as this type of production tending to discourage occupational and inter-firm mobility, in the sense that although the services of a worker, or a significant number of workers, have become obsolete or are not further needed, the firm may have to retain them in order to compensate for the adverse effect of the technological change? These factors would discourage mobility and improvement of productivity in the economy.

Hon. Mr. O'Connell: I do not know how to answer that question, Mr. Chairman. It will depend on the bargaining taking place in the firm, perhaps the size of the firm and alternative openings for those who are displaced by any change. Many major firms will be able to handle the problem. One method frequently employed is that of attrition. We know how the railways cushioned the shock. Those workers will be employed for their lifetime, unless they choose to leave. As they retire—and the retirement age can be governed somewhat by an earlier retirement plan—they are not replaced. Therefore, the work force declines in relation to the technological change, but this is done in a humane manner.

Senator Lawson: Mr. Minister, we experienced a simple example of that, where just the reverse was true. We agreed and negotiated a formula to reduce the work force by attrition. Subsequently we found out that, with the introduction of new technological devices in the industry, in two years the situation had reversed itself and 80 new jobs were created. Unfortunately, that is not always the case, but it is a very welcome example of what happens on occasion when these matters are negotiated on a fair and proper basis and provision is made for the change.

The Chairman: What are the main differences between the provisions in the bill and the recommendations of the Woods task force?

Hon. Mr. O'Connell: We would need a few days in which to answer that.

The Chairman: I do not refer to the entire bill, but only to these four provisions.

Mr. Armstrong: Basically, the approach of the task force was with respect to industrial conversion, as they term it, instead of technological change. A reopener would be permitted if the parties could reach agreement. That is the substantial philosophical or conceptual difference. The parties could agree to reopen. The government considered that if the union was not strong enough to

win substantive provisions to cushion the impact of technological change it would be unable to obtain from the employer the right to reopen.

The Chairman: These provisions then go much further than the recommendations of the Woods task force?

Mr. Kelly: As I understand the concept of the Woods task force, a union could opt out of a term of an agreement. They could have openers if they could bargain to get them, which means conducting a strike if the bargaining is hard enough. A strike could be called to opt out of the closed concept under the act, which would lead to many major confrontations, I can assure you.

Mr. Armstrong: With the agreement of the employer.

The Chairman: The minister has referred to other provisions of the Canada Labour Code, for non-unionized workers. Have you considered any improvement in this field to protect not only a significant number of employees, but perhaps all employees, especially those who are not unionized?

Mr. Wilson: We constantly improve our labour standards and expect to introduce further amendments from time to time. Whether they will bear directly on this problem, however, depends on the conditions we find in industry and what is considered to be the appropriate treatment. Undoubtedly if, through this bill, the application of those technological change provisions result statistically in different norms being established, I would think that this would be reflected in our labour standards legislation.

Senator Hicks: Despite Senator Grosart's reservations about the effect of section 152 in restricting the reopening of collective bargaining to items that relate to the introduction of the technological change, and their effect only, there is no question in my mind that that is what the bill does attempt to do. What I do not understand is that when the collective bargaining is reopened, even though with the best intentions of all parties to restrict the bargaining only to the effect of the technological change, and to try to provide some remedy for employees who may be significantly and adversely affected by it—

The Chairman: And substantially.

Senator Hicks: —and substantially, will it not often occur, however, that in order to do this, you strike at the whole basic nature of the original agreement? I am not an expert in these matters, but would the minister or some of his officials suggest how remedies might be sought to achieve this limited purpose without substantially affecting the whole nature of the agreement?

Mr. Wilson: You are quite correct that in seeking to mitigate the effects of technological change, and in the re-opening of the agreement, there might be some effect on the other provisions. But this is where the bargaining would take place. The employer undoubtedly would adhere to the position, except if he decided otherwise, of confining the bargaining to the effects of that narrow issue. If, on the other hand, the union wished to go after other

provisions not related to the change—actually, right now, under our existing legislation, the parties can agree. There is nothing in this act that would prevent the parties from agreeing at any time to alter any provision of the agreement, except the one relating to the duration of the agreement. This is in the bargaining area, and you are quite correct there.

Senator Grosart: Following that up, if it is true that the reopening of the collective bargaining agreement is to be limited to the effect of the technological change, will the board normally restrict its order to commence negotiations to those employees who are actually displaced? I say that because we are told it will not reopen the whole contract. Therefore, will the board require the employer to discuss the terms and conditions of employment of people who are not themselves affected?

Mr. Mitchell: I think the answer is no, senator. The board order will, I think, be drafted in the terms of subsection (1).

Senator Grosart: Of what section?

Mr. Mitchell: Of section 152—subsection (1).

Senator Grosart: Under the act, you say that the board is required to limit an order to commence negotiation to those employees who are displaced?

Mr. Mitchell: Yes.

Senator Grosart: That is very interesting. We will see if that happens.

Mr. Wilson: If it does not happen, it will simply mean that they go down to the strike stage on the question, and the issue will be decided there.

Senator Grosart: That is my point. You cannot limit it. There is no way that you can limit it, as you say, to the effects of technological change, because once the board requires the two parties to reopen, to renegotiate, if one side insists on going beyond the direct effects of the technological change you will have a lock-out or strike.

Senator Hicks: They do not even have to do that. My feeling is that they can try to restrict themselves to the effects of the technological change, but in order to find a worthwhile remedy relating to those adversely and substantially affected by it, they may have to do other things that will go beyond that; and, of course, this will then give the right for a legal strike or lock-out during the course of a collective agreement, which would not otherwise have been possible.

Senator Grosart: And which might have nothing to do with the direct effects of the technological change. That is why, in my view, it is unrealistic to say that section 152 restricts the renegotiation to the effects of technological change.

Mr. Wilson: It is in the hands of the parties.

Senator Lawson: Yes, and I think that Senator Grosart underestimates the economic muscle of the employers. When we

have a contract open, and we are legally entitled to bargain on everything, we have difficulty getting them to do that. Even on the basis of limiting it, I think you can rely upon the economic muscle of the parties to achieve a balance.

Senator Grosart: If we could do that, we would not need any labour legislation.

Mr. Wilson: I would think that if it came down to a board of conciliation in those circumstances, the conciliation board might have something to say about the extent to which one party or the other was going beyond the board's order in formulating the conciliation board's recommendations.

Senator Grosart: Under the act as drafted, may I ask if the board would have power to require recourse to conciliation or arbitration in the event of disagreement on new terms?

Mr. Wilson: If there were disagreement, it would follow the normal course.

Senator Grosart: Under the act, does the board have the power to order recourse?

Mr. Kelly: No. If the board gives the parties the right to open, all the conciliation procedures apply. The union does not acquire the right to strike until they have gone through the conciliation process, which could involve a conciliation officer, a conciliation commissioner, or a conciliation board. There is no arbitration in the Act as it stands. There is no arbitration in this bill. Before either party could get to a strike or lock-out position, it must exhaust the procedures which it goes through now.

Senator Grosart: In other words, are we being told that the board's powers are limited to ordering negotiations to commence?

Mr. Kelly: That is right.

Senator Grosart: But it has no power to make any order as to what will happen after negotiations commence?

Mr. Wilson: That is right.

Senator Lawson: Nor would any conciliation officer or conciliation board have the right to make a binding settlement. They can only make recommendations.

Mr. Wilson: That is right, except in one small instance where the parties agree beforehand to be bound.

Senator Lawson: Yes.

The Chairman: And would it be possible, for instance, once negotiations start, that the union might decide to accept the technological change, with the result that 50 employees will lose their jobs, providing the employer gives to the remaining employees higher wages or a shorter work week?

Senator Lawson: The parties could also, if it were merely a technological change issue, agree on that issue to be bound by the officer's or commissioner's or board's decision?

Mr. Kelly: If they so agreed.

Senator Lawson: By consent.

The Chairman: What about the answer to my question? I do not think that deals with my question. The union could decide to forget the displaced workers if the firm provided higher wages for those remaining?

Mr. Wilson: Absolutely.

Mr. Kelly: If the employer agreed that they could do that.

Senator Lawson: But the employer would not be forced to do so under the order.

The Chairman: It would be part of the negotiations. If, for instance, the employer did not accept it, then the right to strike would be given.

Mr. Kelly: No, sir. First would come the conciliation procedure—

The Chairman: Yes, the various steps, but ultimately the right to strike would be available.

Mr. Kelly: If it went before a conciliation board—which, in theory, represents the public of Canada—and the union had a demand for a ten cent an hour wage increase, I am quite sure the conciliation board would not equate that to the issue in dispute and would make it quite clear in their recommendations.

The Chairman: Yes, but this is not binding on the two parties. The union could still strike.

Mr. Kelly: In theory, yes.

The Chairman: In practice, too.

Mr. Kelly: In practice, they could strike, but as has already been said, if the employer was not open to such a suggestion he would have a great deal to say about the outcome.

The Chairman: Well, we are experiencing a strike today where the provisions in the contract have been agreed upon by the union leaders and the employers, but not the rank and file, so they are on strike. It is an illegal strike, but it is a strike.

Senator Grosart: Mr. Chairman, may I ask whether or not the order to commence negotiations in these circumstances would automatically nullify or make void the original agreement, let us say, in respect of section 155?

Mr. Wilson: No.

Senator Grosart: It seems to me that section 155 contains a provision for final settlement without stoppage of work. Is this nullified if the board decision is that negotiations must commence on what we are told is this limited sphere of the effects of technological change?

Mr. Wilson: On this issue, yes, but not on any other issue. If the board says that the agreement cannot be opened because the application is defective or does not meet the conditions in the technological change provision, of course section 155 applies to that collective agreement because it cannot be opened. On the other hand, if the board opens the agreement to bargaining on the effects of technological change, this does not nullify section 155 with respect to those other provisions in the agreement.

Senator Grosart: That is one interpretation.

Mr. Wilson: I think there probably would be some litigation on that.

Senator Grosart: I am sure that there would be, because, if I may suggest, this bill really nullifies, in effect, the original collective agreement.

Mr. Wilson: It would, sir, if the technological changes touched every provision of the agreement, but they do not. The reopener is confined. You go through conciliation on those issues, but if during those proceedings a union or a company alleged agreements with respect to the other provisions, the arbitration procedures which the law provides under a collective agreement would continue to apply. It would be absurd to have any other result.

The Chairman: Would it not be true that some of the difficulties would have been overcome if you had provided in this legislation that where there is no mutual arrangement to deal with these issues there would be compulsory arbitration to deal with the effects of technological change?

Mr. Wilson: There are a dozen different ways it could be dealt with, but this is the one that was chosen.

The Chairman: But you would not have to go through the board and all the delays and possibly lockouts and strikes.

Mr. Wilson: It is considered better under this type of legislation and the type of industrial relations system we have to let the parties decide their own destiny on these things. Actually, if you were going as far as to allow an artiter to decide these things—and even Friedman did not permit this in his recommendations—the next step would be to have compulsory arbitration with respect to all of the act and do away with the conciliation provisions altogether. The system here, if I may explain just a little further, is designed to be a reflection of the whole system.

The Chairman: Well, you do not have to apply it with vengeance.

Mr. Wilson: If you are going to have compulsory arbitration with respect to technological change, why not have it with respect to all of the provisions?

The Chairman: I would be against that.

Senator Hastings: Mr. Chairman, I wonder if we might excuse the minister. I am sure he has a great deal to do.

Hon. Mr. O'Connell: I would appreciate that.

Senator Smith: Before the minister leaves, I wonder if he is in a position to give us a statement on has problems?

Hon. Mr. O'Connell: Only that they are not resolving themselves by the actions of the two parties.

The Chairman: Thank you for coming, Mr. Minister.

Senator Carter: Mr. Chairman, I arrived at the meeting late, and perhaps this question has already been asked. My question is this: If there is a dispute as to whether a technological change has taken place or not—whether certain action actually constitutes a technological change—who has the last word? Does the board ultimately decide that?

Mr. Mitchel: The board decides.

The Chairman: I have one last question. How do you interpret in section 150(2)(a) the expression "the nature of the technological change"? As you know, in the innovation process technological change is very often quite a secretive operation with regard to competitors. If you force the innovative firm to describe more or less completely the contemplated change, then this information will become available to competitors who may not have a union and will be able immediately to pick up this technological change on a free basis.

Mr. Wilson: There is no doubt that under the bill as drafted there will be various tactical positions. An employer must decide in his own mind, depending on the nature of his business and what he hopes to accomplish, just how he is going to behave. For instance, if he is afraid of his competitors so much, he will be less afraid of having his agreement reopened, so he will not give notice and, in due course, will be challenged before the board for not giving notice. However, that time will probably suit him better than during the regular negotiating period.

The Chairman: Even if he does not go before the board, he has to give notice to the union and inform them of the nature of the technological change.

Mr. Wilson: If he fails to give notice he just leaves himself in jeopardy.

The Chairman: Then he comes before the board. Even if he does not go before the board, even if he gives notice to the union, he has, in a way, to make the nature of his innovation public.

Mr. Wilson: If he does. But he can choose the other course if he wants to, to not give notice. Then, when he desires to make the change, the union will go. Surely when he desires to make the change later he will have revealed his technological change position to his competitors.

Mr. Kelly: Could I suggest that what the board would be interested in is the displacement effect, and if a manufacturing industry were going to introduce new equipment, a new type of milling machine which would require less of a tool-up period so that they could stagger the work force to operate these machines, which would result in a smaller work force, they would say by the introduction of a new type of milling machine they would not have to document the blueprints of go into details of the complex production system, brewing system, or what-have-you.

Mr. Wilson: Let us put it this way. An employer who does not intend to make a change at all may give notice of change for bargaining purposes. There are all sorts of tactical situations that can arise.

Senator Goldenberg: I think they do that now when they give notice of certain lay-offs, not intending to have lay-offs.

Mr. Wilson: Of course. As you know, under this provision there are three avenues: you can make the substantive provisions and sign the waiver; or you can put in a procedure which will settle it by arbitration; or you can elect or not elect to give notice to the employees. Let us say an employer is uncertain about his technological change situation. He is not likely to give notice, because if he is uncertain it may be that by the time he makes the

change his plans will have been changed entirely in relation to the notice given. In those circumstances he may prefer not to give notice at all and wait. If he does not prefer to do that in a certain kind of business, where technological change is very rare, he may wish to have a procedure by which an arbitrator, or someone else, will decide, because it is so rare.

We do not think we will have too many of these kinds of situations in the federal jurisdiction, which is pretty well settled, but in the kinds of business that operate there are a number of options open to the employer, including, as I said, the giving of one notice or multiple notices to the union for bargaining purposes purely, and then trying to get some concessions for dropping them.

Senator Grosart: Are we being told that an employer has the option of not giving notice?

Mr. Wilson: That is right.

The Chairman: Yes.

Senator Grosart: If he does not give notice, is he not breaking the law?

Mr. Wilson: No. It may be that the union, when he does make the change, will see some benefits in it for themselves and not apply to the board for an order requiring him to bargain. If they did apply to the board for an order requiring him to bargain, the order would probably be granted.

Senator Grosart: My question was: If he does not give notice, is he not breaking the law?

Mr. Wilson: No.

The Chairman: I think this is covered in section 151.

Senator Grosart: Section 150(1) says:

An employer who is bound by a collective agreement and who proposes to effect a technological change that is likely to affect the terms and conditions or security of employment of a significant number of his employees to whom the collective agreement applies shall give notice.

Mr. Wilson: It is put in this way, that he shall give notice, but if he does not—

Senator Grosart: He is breaking the law.

Mr. Wilson: No. He subjects himself to a summary notice.

Senator Grosart: Surely, if you say he "shall" do it, he is breaching the law if he does not?

Mr. Wilson: Well,—

Senator Grosart: Is the answer yes or no?

Mr. Wilson: Yes, but you are just looking at one section.

Senator Grosart: No, I am not.

Mr. Wilson: If he fails to give notice, the bill provides a procedure for the union going before the board to seek compliance

with it. If the board grants the notice to bargain, it will carry with it the conclusion that he did not give the notice he should have given.

Senator Grosart: Then he breaks the law.

The Chairman: No. Under section 151(1)(b), where a bargaining agent alleges that the employer has failed to comply with section 150 there is a procedure for the union to make a request to the board.

Senator Grosart: That is merely a procedure by which the union can insist that he keeps the law. If the law says he shall do it, surely if he does not he is breaking the law? If that is not so, then I do not understand the word "shall" in an act of Parliament.

Mr. Wilson: There are so many circumstances, involved, and so many varying circumstances, that if he is violating the law, as you say, I think it will be the decision of the board that a notice to bargain shall issue.

Senator Grosart: Certainly I agree with that. If I am charged with breaking the law it will not help me to say there are a lot of circumstances and somebody else can make me obey the law. This does not help. The fact is that I am breaking the law.

Mr. Wilson: It is a procedural violation.

Senator Grosart: There is no such thing as a procedural violation of an act of Parliament. Please!

Senator Lawson: I think it is very clear. I agree with Senator Grosart. As I read it, he would have been guilty of failing to comply, and if he fails to comply with any provisions, under section 190 he is guilty of an offence and liable, on summary conviction, to a fine not exceeding \$10,000. I agree with Senator Grosart.

Mr. Wilson: I think you will find that if a charge were laid under that section, or a complaint made to the board, on a notice to bargain, which the board could issue on a proper complaint by a union, the law would in itself discharge the violation; it could not help but do so.

Senator Grosart: The board cannot "discharge" a violation of the law.

Mr. Wilson: Then the board has no power at all.

Senator Grosart: If I commit a non-capital murder, it is true I may get a suspended sentence, but this does not mean I did not break the law. Why make this pretense? He is breaking the law if he does not give notice. Why run away from it?

Mr. Wilson: There is a lot of difference in committing murder, which can be proven and established. If in the case of the murder, on complaint that it was murder, the board could revive the victim and provide the victim with an avenue of relief—

Senator Lawson: Surely, Mr. Wilson, if the company failed to comply and the trade union does not seek the remedy of getting an order from the board, we can go right to section 190 and charge the company with failing to comply—

Mr. Wilson: You can.

Senator Lawson: —get a conviction and have a penalty assessed against the employer?

Mr. Wilson: I do not think you would get a conviction though. I think what you would get is an order that if you are injured in that respect you should follow the procedure provided in the act and serve notice on the board that you want them, the board, to issue a notice to bargain on that person who had broken the law. But I do not think you would be able to go into the courts for some other kind of remedy.

The Chairman: Are there any other questions?

Senator Cameron: I would just say, Mr. Chairman, that it seems to me that this is a good example of permissive society running riot. No wonder we have trouble.

The Chairman: I understand that we are now breaking new ground. This legislation is brought forward on a kind of experimental basis. I certainly hope that, if this bill is adopted, the department will take a very close look at how these provisions work. As far as I am concerned, I certainly am serving notice that we will look at the implementation of these provisions very closely, as a chamber of second thought or as a committee of second thought. Gentlemen, you might be asked next year, or at some stage, to come back and justify the optimism that you have manifested today.

Mr. Wilson: Mr. Chairman, certainly I can say that we considered, in regard to some of the critics, even some of the bitter critics, of the legislation, that if the bill is as bad as they say it is, it cannot possibly last.

The Chairman: As far as we are concerned, there is no member of this committee who is a bitter critic of the legislation. We are worried, and some of us are more worried than others, that this will be another great impediment to technological innovation, and a further discouragement to the expenditures in industry which are going down at the moment.

Shall section 149 carry?

Hon. Senators: Carried.

The Chairman: Shall section 150 carry?

Senator Grosart: On division. Mr. Chairman, I said "on division", but I am not a member of the committee. I do not see any senator

here who sits in the same group of seats as I do, so I think my motion—it is a motion to carry the section on division—is out of order.

The Chairman: I was going to point that out, senator.

Senator Grosart: I thought I would do it before you did.

The Chairman: I am sure you will repeat the same words on third reading.

Shall section 150 carry?

Hon. Senators: Carried.

The Chairman: Shall section 151 carry?

Hon. Senators: Carried.

The Chairman: Shall section 152 carry?

Hon. Senators: Carried.

The Chairman: Shall section 153 carry?

Hon. Senators: Carried.

The Chairman: Honourable senators, we deal now with the last part of clause 1. I understand there are no obvious objections to this latter part of clause 1.

Hon. Senators: Agreed.

The Chairman: So I would like to put it as a package: Shall the rest of clause 1 carry?

Hon. Senators: Carried.

The Chairman: Shall the title of the bill carry?

Hon. Senators: Carried.

The Chairman: Shall I report the bill without amendment?

Hon. Senators: Agreed.

The Chairman: Gentlemen, thank you very much for coming here and giving us so much assistance—and good luck!

The committee adjourned.



FOURTH SESSION—TWENTY-EIGHTH PARLIAMENT

1971-1972

THE SENATE OF CANADA

PROCEEDINGS OF THE STANDING SENATE COMMITTEE ON **HEALTH, WELFARE AND SCIENCE**

The Honourable MAURICE LAMONTAGNE, P.C., *Chairman*

Issue No. 4

FRIDAY, JULY 7, 1972

Complete Proceedings on Bill C-230,

**“An Act to provide for the resumption of the operation
of the ports of Montreal, Trois-Rivières and Quebec”.**

REPORT OF THE COMMITTEE

(Witnesses—See Minutes of Proceedings)

THE SENATE COMMITTEE ON HEALTH,
WELFARE AND SCIENCE

Chairman: The Honourable Maurice Lamontagne

The Honourable Senators:

Bélisle	Hastings
Blois	Hays
Bonnell	Inman
Bourget	Kinnear
Cameron	Lamontagne
Carter	Macdonald
Connolly (<i>Halifax North</i>)	McGrand
Croll	Michaud
Denis	Phillips
Fergusson	Quart
Fournier (<i>de Lanaudière</i>)	Smith
Fournier (<i>Madawaska- Restigouche</i>)	Sullivan
Goldenberg	Thompson
	Yuzyk—(27)

Ex officio Members: Flynn and Martin

(Quorum 7)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate,
Friday, July 7, 1972:

Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Martin, P.C., seconded by the Honourable Senator Benidickson, P.C., for the second reading of the Bill C-230, intituled: "An Act to provide for the resumption of the operation of the ports of Montreal, Trois-Rivières and Quebec".

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Martin, moved, seconded by the Honourable Senator Benidickson, P.C., that the Bill be referred to the Standing Senate Committee on Health, Welfare and Science.

The question being put on the motion, it was—

Resolved in the affirmative.

Robert Fortier,
Clerk of the Senate.

Report of the Committee

Friday, July 7, 1972.

The Standing Senate Committee on Health, Welfare and Science to which was referred Bill C-230, intituled: "An Act to provide for the resumption of the operation of the ports of Montreal, Trois-Rivières and Quebec", has in obedience to the order of reference of July 7, 1972, examined the said Bill and now reports the same without amendment.

Respectfully submitted.

Maurice Lamontagne,
Chairman.

The Standing Senate Committee on Health, Welfare and Science Evidence

Ottawa, Friday, July 7, 1972.

The Standing Senate Committee on Health, Welfare and Science, to which was referred Bill C-230, to provide for the resumption of the operation of the ports of Montreal, Trois-Rivières and Quebec, met this day at 11.45 a.m. to give consideration to the bill.

Senator Maurice Lamontagne (*Chairman*) in the Chair.

The Chairman: Honourable senators, I suppose that it would shorten the proceedings if we were first to deal with the matters raised in the house by the Leader of the Opposition. I believe that the minister heard most of the points, because I saw him in the gallery.

Senator Martin: Mr. Chairman, I do not think the minister had the opportunity of hearing all of Senator Flynn's statement.

The Chairman: In any case, I am sure that Senator Flynn will put his points again, if honourable senators agree to that procedure.

Senator Flynn: I think the minister should be invited to make a statement first.

The Chairman: Of course, that is the general procedure, in the event you wish to do so, Mr. Minister. Otherwise I would give the floor to Senator Flynn.

The Honourable Martin O'Connell, Minister of Labour: Mr. Chairman, I appreciate very much the despatch with which both the House of Commons and the Senate are proceeding to consider this emergency legislation. I would like to say here, as I said in the Commons in introducing the second reading debate, that it is indeed an unhappy duty to bring forward this type of bill. It is a very infrequent act of Parliament that seeks to terminate a work stoppage. This may be the sixth such instance in 30 years and perhaps a longer period of time. We are therefore doing that which we normally do not expect to do.

Before presenting this type of bill, all other available remedies are exhausted. It would have been far better, of course, had the parties been able to stay within the boundaries of the collective agreement and work out their dispute. They came very close to doing so. It became clear that those remedies were exhausted, at least on July 4, a few days ago. You are all aware, I am sure, that on June 29 the arbitrator named in the agreement brought in a ruling which interpreted the basic issue of the dispute. He gave a judgment in this case against the union activity and confirming the right of the employer to do that which it had done, which had brought on the dispute.

That presented the possibility of a mediating procedure, since over a period of time the problem had become greater than a dispute within the confines of the collective agreement. That is to say: How do you get back to work in these circumstances, when there may be no ships for a period of time? How does one get back to work when there has been a guaranteed income plan of 37 weeks' pay, whether one is working or not? How does one get back? Everyone cannot get back.

Senator Benidickson: Under what provision is that?

Hon. Mr. O'Connell: The collective agreement contains clauses providing for what is termed job security. We should be clear, however, that it is not job security in the normal sense, but an income security plan providing for 37 weeks' pay whether one is working or not. Because of the shipping season and the fluctuations in work opportunities, this was a basic feature of the plan.

How does one break through after being out of work for eight weeks? How is a return to the guaranteed system effected in a manner which will not bankrupt the employers, yet still be equitable for the men?

This therefore became an issue, and we undertook, as soon as the arbitrator's ruling had seem brought down—, that is to say, on June 29—to go immediately to Montreal and convene a meeting of the parties. In four days of intensive mediation Mr. Kelly, who is with me, Mr. Bernard Wilson, the Deputy Minister, Mr. Charles Poirier, who is the senior officer in Montreal and who had been with these parties over the past three years, attempted to reconcile the back-to-work differences, coming very near to success.

Most of the minor issues were reconciled, but there remained the major obstacle, which is reflected in clause 7 of Bill C-230. The impasse remained. Therefore we were in the position that all remedies open to the parties within the framework of the collective agreement had been sought and had failed. A mediation process of five days had been engaged in and had come to an impasse. We were then faced with the responsibility of legislating, in our judgment. That is the background for the presentation of this legislation.

Mr. Chairman, with those opening remarks I would be glad to respond to whatever questions the members of the committee wish to pose.

Senator Flynn: I want to assure the minister that I am in sympathy with his thinking of the past weeks, and that my criticism is not directed to him personally but more to a practice, a system and legislation which I think very often appears to be inadequate.

Having said that, my first question to the minister concerns the last problem. He seemed to indicate that the problem of job security

created the impasse which finally provoked the introduction of this legislation. I think the minister would agree with me that this problem was a consequence of the illegal strike and that the longer the union and the longshoremen delayed their return to work, the worse this problem would become. I think that by this legislation you have not provided a solution, but you have provided a procedure by which to find a solution. There is no solution to this problem, except that an arbitrator will look into this matter and will finally decide the fair way of getting out of it.

My question is: If the problem had been created by circumstances beyond the grasp of both the employer and the employees, would not the collective agreement have provided the machinery for solving it?

Hon. Mr. O'Connell: There is a provision in the collective agreement, Mr. Chairman, that I believe is intended to deal with circumstances arising beyond the control of the two parties. "Force majeure" is, I think, the expression—we might say, a major crisis. I do not know what the interpretation of a major crisis would be, but surely it would be the intention of the parties to make provision for some unusual circumstances that would upset that job security plan, and that is in the collective agreement.

Senator Flynn: Do you not agree that the collective agreement, as it exists, could have been used to find a solution to this job security plan, even in the circumstances in which it was created?

Hon. Mr. O'Connell: Yes, Mr. Chairman. There is no question but that the two parties, collectively and separately, failed to make use of the collective agreement to resolve their differences. They ought to have gone immediately to the person they had named to settle this kind of dispute. The union ought to have gone at once if it felt aggrieved.

Senator Benidickson: Under our present law?

Hon. Mr. O'Connell: Yes; the collective agreement itself. Where the present law comes in to reinforce that, the Labour Code requires that every collective agreement have within it provisions to go to an arbitrator when a dispute arises over the interpretation of a clause or over a grievance. For example, in the event of a grievance that the other party violated one of the provisions of the accord, the law requires that there be such an arbitration procedure, and if the parties have failed to implant one in their collective agreement, the Canada Labour Relations Board may supply one, deem it to be there, and set out the way it will work. That is where the law of the country comes in to support the procedure. They did, in fact, put one into their collective agreement, but then failed to use it.

I do not know how one is going to explain the failure to make use of the arbitrator, but possibly each party may have either feared the result or felt it was the other party's initiative; and in these circumstances sometimes, in the weaknesses of human nature, they get locked into positions. Whatever the reason, there it was.

The Chairman: I heard an expert on television the other night. I do not know whether he was right.

Senator Smith: An expert in which field?

The Chairman: In the labour field. He was trying to interpret this crisis. His interpretation was that apparently this was a grass-root movement and that the rank and file of the union, at the time when their leaders signed the agreement with the employers, did not understand the implications of the agreement and, as a result, when they realized the situation, they went out.

Senator Flynn: Do you mean that was the cause of the strike?

The Chairman: I do not know if that is the right interpretation. Would you care to comment on that?

Hon. Mr. O'Connell: Mr. Chairman, there probably is a complex of factors, but the explanation you have presented undoubtedly is one of those factors in the total picture.

We frequently heard the point of view of the longshoremen that the redeployment of men, which the employer undertook to do in May—let us say, even in April—could be undertaken by the employer only when the computer despatch system was in operation, which was expected to be by September.

The redeployment of men, simply put, is this, that if a gang is working in the hold of a ship and some become surplus to the requirements of the job at the moment, if, instead of 16 men, you require only eight, can you take the other eight over into the sheds and say, "Now, will you package this up, and get this ready?" In the past, that was not possible, but under the new agreement, the flexibility that the employer had was a requirement that he felt he needed, in order to live up to the guaranteed pay, provision he must have productivity. He felt he had the flexibility to redeploy to the shed those persons not needed in the hold.

That was a new experience for the men, because under the old system they had other kinds of very limited redeployment. As I understand it, if they were not needed, they were virtually on relief and not working. It was a system called "spello". I presume that means that you spell each other off in not working.

The employer began redeploying, as he felt he had the right under the new agreement, even though the computer had not yet gone into operation.

I might pause there to say that the computer was linked to an automatic telephone call-up system, where it would be programmed to know what ships were coming in, the type of cargo on those ships, the sequence in which they would be unloaded, how many men would be required for this period of time, what skills they require, how many would be needed for the next layer of cargo, and so forth. It would be calling only those that it needed. The calling up would be in accordance with seniority arrangements, and so forth. The computer would, therefore, be an objective master of the situation. In that sense, the traditional size gang of 16 men is not called up but only that number that is needed. That had been agreed to. It was the end of the feather-bedding system.

The men took the position that until the computer was operating the old practices prevailed; and the employer, of course, took the other position. The result was that the arbitrator ruled that

the employer was right. In his ruling he made reference not only to the main collective agreement, but also to memorandum No. 1 of April 3, which was initiated by the president of the union and the president of the employers' association. That memorandum provided for transitional arrangements with respect to the redeployment of men. The arbitrator's judgment gave the employer the right to redeploy, as, in fact, he was doing. You could argue that the men did not understand or did not know this, but the fact is that this is the very kind of instance in which they should go to the arbitrator to determine whether or not it is the employer's right to follow that course or whether in doing so he is in violation of the agreement.

That course was open to them, but they declined to follow it. The employer also declined to follow it, taking the position that they had made their move and it was up to someone to respond. We had an impasse until the employer finally went to the arbitrator and was confirmed in his actions.

Senator Flynn: Mr. Minister, I do not know whether or not you heard all of my speech in the chamber, but my thesis was that Bill C-230 does not go beyond the provisions of the Canada Labour Code and is, in fact, merely a repetition thereof, with the exception, of course, of clause 7 which deals with the job security plan. Would you care to comment on that?

Hon. Mr. O'Connell: Clause 7, of course, is the heart of the question. How does one break through the return-to-work arrangements except through an arbitration of the job security provisions—the pay guarantee provisions? And that is, indeed, beyond the scope of the Canada Labour Code. This bill specifically orders the return to work, and it specifically prohibits strikes and lockouts. Both of those, of course, are provided for under the Canada Labour Code, but this bill being a special act of Parliament opens up enforcement procedures not available under the Canada Labour Code; that is, the enforcement procedures of the Criminal Code.

Senator Benidickson: That was my point. I should just like to say that I admired your restraint last week. I wondered why this bill was necessary, but I knew you would explain it, as you have done so well this morning. I think you have explained why clause 7 of this bill has been included.

Hon. Mr. O'Connell: Mr. Chairman, I might go one step further in that explanation. In clause 7 you will see the word "modifications". This bill invests the arbitrator with a power which he does not normally have. His normal power is to interpret the collective agreement, not to modify it. Here his power is to rule on an alleged violation. We give him the power in this bill to go beyond the normal power to modify the pay guarantee plan because automatically it has been disrupted.

Senator Benidickson: This is the fifth or sixth time we have done that.

Hon. Mr. O'Connell: Yes, that is right. The plan is dislocated; it is disrupted and a date has to be fixed for its resumption. The arbitrator under this bill has the power to fix the date and the time interval in which modification of the plan will be in effect, after which the fullness of the plan will be restored in whatever form he

decides. That is an additional power which is not provided for under the Canada Labour Code.

Senator Carter: Mr. Minister, you said that this bill, if passed, will give recourse to the Criminal Code as well as to the Canada Labour Code. In the event of any refusal to obey this law, when passed, which code takes precedence? Do you have to exhaust the powers under the Canada Labour Code before resorting to the Criminal Code, or can you apply the Criminal Code right away?

Hon. Mr. O'Connell: Well, the Labour Code does not apply in this case. Therefore, we would not have recourse to the penalties provided therein. A special act of Parliament takes precedence, if we want to call it that, and, therefore, any violations thereof are subject to the provisions of the Criminal Code.

Senator Martin: Senator Flynn's point in the chamber this morning with respect to clause 7, the job security clause, was that the Canada Labour Code itself provides remedies for dealing with this situation. His argument was that it was redundant for Parliament, particularly with respect to clause 7 and its implications, to pass this law when there is already in existence a law that is applicable. I believe that was Senator Flynn's argument. It might be useful if you were to deal with that now.

Hon. Mr. O'Connell: Clause 7 is an extremely important clause. It is the obstacle around which we must find the route back to employment. The Canada labour Code would not have assisted us in finding that route. It is not the usual return to work, such as you might experience if a factory had shut down and then, upon an agreement being reached, the employees had gone back in and started it up again. This return to work is vastly complicated by the pay guarantee plan and the nature of dock work in that there may not be any ships to be loaded or unloaded. In other words, the men report to work and say, "Here we are. Begin paying us!" and if there is no work, then there are difficulties.

Senator Carter: The main purpose of this bill is to preserve as much of the original agreement as can be salvaged? The return to work, and so forth, will be worked out by an arbitrator. The main objective is to preserve as much as possible of the original agreement?

Hon. Mr. O'Connell: That is right. I ought to say that the Criminal Code is not the only operational procedure. Civil proceedings could be initiated by either party, which means going into court to get an injunction; and, of course, a failure to comply with the injunction leads to contempt of court proceedings. That course of action is still open.

Senator Flynn: Mr. Minister, when a labour dispute arises which does not affect the public interest, I take it your department will not, as a matter of policy, resort to section 147 of the Canada Labour Code to provide penalties for those causing a lockout or causing a strike or participating in a strike. However, in a strike such as the one we are now experiencing it seems to me that right at the beginning, envisaging that it could last a rather lengthy period, it was the responsibility of your department to resort—and I am not

saying without precautions—to section 147 of the Canada Labour Code.

Do you not feel it might have had the effect of persuading them to return to work if you had warned the union leaders and membership that they were liable to the fines provided under section 147(3) and (4), and that following a set period of time your department would initiate proceedings under that section?

Hon. Mr. O'Connell: There are two parts to that question. In reply to the first part, I would say that we would not encourage the use of section 147 to transfer into a court proceeding that which is really a collective bargaining dispute; but we will give permission to prosecute when the circumstances seem to warrant it.

Secondly, in the case to which the senator refers we declined to give consent to prosecute. If my memory is correct, consent to prosecute was sought on the grounds that the other party had failed to go to arbitration. However, the collective agreement provides that either party may initiate; it does not have to wait for the other. Therefore, I took the position that the parties, singly or jointly, had not exhausted the private remedies available to them and that it would not be appropriate to have one going to the court if that one seeking to go to the court could itself go to the arbitrator.

Senator Flynn: I agree with that conclusion, but as far as the strike is concerned, the members, the longshoremen, and the union officers had no right to strike. That was quite clear from the beginning. Therefore they were liable to the penalties provided in subsection (3) and (4) of section 147. I suggest that it was the responsibility of your department to proceed after a while. I do not mean right away, but after a while.

Senator Benidickson: How many days?

The Chairman: Could we proceed in an orderly fashion, please? A question has been put by Senator Flynn.

Mr. W. P. Kelly, Assistant Deputy Minister, Industrial Relations, Department of Labour: In our experience—and I believe this is the purpose of the latitude in the act that gives the minister the right to consent or withhold his consent to prosecute—it is questionable whether that would bring remedy. In the first instance, the parties had private remedy that they had not exhausted. Secondly, with the basic issue unsettled—and it has been suggested that there was confusion in the minds of the rank and file, whether the company had the right or not—the court would not have determined that issue. It was the minister's and our considered judgment that that would not bring remedy to the dispute; the employers had instituted private action in the court and there were contempt proceedings.

We felt that the basic issue must be settled. That is: Did the company have the right to break up these gangs prior to September 1? When that issue was resolved we immediately moved on the peripheral issue, which then had become greater than the main issue, that of job security, to try to work out an agreement with the parties. That could not be handled through the Labour Code unless they agreed to modify the agreement in this one instance; it meant that immediately the employers would lift the suspensions, and have all the employees suspended at that stage to protect themselves

under the job security provision. If they lifted those suspensions and that question went to arbitration, the arbitrator would have no other alternative but to rule that the job security provision become immediately effective, and some 32 longshoremen would be on approximately \$200 a week, with no tonnage in this port, possibly for some time to come, to pay this job security. This is again the necessity of clause 7.

Senator Flynn: I agree with that, except that it is provided in the collective agreement that if you have a grievance you have to go to the arbitrator. The employer had no grievance. It was the employees who had a grievance, and it was up to them to go to the arbitrator and not go on strike. From that moment they were not using the means at their disposal. It seems to me obvious that the situation would develop as it has, and that at that time with the use of section 147 you could possibly have convinced them that they had to go to arbitration before, and that was the only remedy they had.

Mr. Kelly: Of course, as the collective agreement is worded, both parties can initiate.

Senator Flynn: Yes, but if I have no grievance I am not going to go to an arbitrator.

Mr. Kelly: The question is: Would that have brought them back to work, when they did not respond to the private action of the employers in the court and the contempt proceedings?

Senator Flynn: It was late then.

Senator Benidickson: I should just like to say that when I interjected to ask, "How many days?" I did not mean that to be a reflection on the minister or his administration in any way. He has not been long in that office. The deputy minister has now adequately explained the whole thing for me.

Senator Carter: I should like, through you, Mr. Chairman, to ask Senator Flynn if he would elaborate on his earlier question a little. I understood him to say he felt that the minister should have issued a warning that he would take action under the Criminal code after a certain date.

Senator Flynn: Under the Labour Code.

Senator Carter: Yes, under the Labour Code. Assume that the minister gave a warning and said, "If in 10 days' time you have not fixed things up, we are going to apply the Labour Code." Assuming that nothing had changed, does Senator Flynn feel that the government should have taken action against the union or against both parties, because both parties had disregarded it?

Senator Flynn: No, no. I think Senator Carter is mistaken.

Senator Carter: I want to clarify that point.

Senator Flynn: The collective agreement provides for final and compulsory arbitration, in the case where you have a grievance. The union had a grievance—not the employers—and instead of calling for

the arbitrator to give a ruling, they went on strike, which was against the Labour Code and against the collective agreement. What I suggested is that the minister—realizing that that kind of strike, if it were to last any length of time, would eventually have hurt the public interest more and more—should have warned the union leaders and the longshoremen that according to section 147 they were liable to fines, as provided therein, for each day they continued on strike.

That was the remedy available under the Labour Code. That is what I am asking. I can understand that the minister would not, on the first day, prosecute all those concerned, and that is why I used the word "warning". This provision was there; this remedy was there. It may be that it was not sufficient, I do not know; but if it was not sufficient, I doubt that the provisions of Bill C-230 will be sufficient, unless, as I said before, it is more persuasive because it is a unanimous declaration of Parliament that we will not tolerate that.

Hon. Mr. O'Connell: Of course, the penalties are significant compared with those in the act which are \$500 a day.

Senator Flynn: Except that you have a daily penalty here too, and 50 days at \$300 a day is already \$15,000.

The Chairman: Senator Flynn, I think you should also take into account the new aspect which the minister brought up a moment ago, that in this bill the arbitrator will have more power than is provided under the agreement.

Senator Flynn: For the security plan, I agree—

The Chairman: Which is the main difficulty.

Senator Flynn:—but the longer the strike was to last the worse this problem was to become. That is why we have to provide for it, because the strike has lasted too long. If it had lasted only a week, there would not be that problem.

Senator Martin: The point there is that Senator Flynn argues—and I just say this so that the minister will realize this was part of the thrust of Senator Flynn's argument this morning—that if intervention had taken place before the last arbitration, the circumstances that reduced the fund would not have been present; and your answer to that, as I understood it, is that you were hoping in this human situation that the parties themselves would act pursuant to their powers, their rights and their collective agreement. Is that not the situation?

Hon. Mr. O'Connell: Yes.

Senator Benidickson: I should like to say—

The Chairman: A question has been put by the Leader of the Government, and I think we should allow the minister to answer that question.

Senator Benidickson: I just want to say, Mr. Chairman, why. I want to make it clear that I realize that a certain time had to go by.

Hon. Mr. O'Connell: I think Senator Martin has stated it well. There are rights under the agreement, but also obligations that had not yet been fulfilled. We ought to consider this, when we are discussing who had a grievance. The employer also had a grievance, it being the withholding by the men of their work. His grievance was that they had walked off illegally. Both had grievances there. Notwithstanding that, the issue then was: Did the employer have the right to do what he was doing? A court would not be deciding that issue; it would be penalizing somebody for doing something or for walking out, it may be. That had to be established; that is the function of the arbitrator. We cannot impose arbitration; the Labour Code does not give the minister power to impose an arbitration procedure. It does oblige the parties to have one that they establish, and it obliges them to use it.

Senator Benidickson: Very good.

Senator Flynn: A grievance is not always a violation of the law, but sometimes it is. The grievance of the employer was that there was a violation of the law, whereas the grievance of the employees was not that there was a violation of the law but that there was a violation of some conditions, material conditions, of the collective agreement. That makes a difference. When there is a violation of the law, the minister responsible for that legislation has some responsibility; whereas if there is a violation only of a collective agreement, it remains a private matter between the parties. That is the point I wanted to make.

Hon. Mr. O'Connell: You make the point, senator, and I accept the point that you are making. I take the responsibility for having decided, at that point in time, that to give consent to prosecute would not contribute to the resolution of the dispute. We have to weigh those factors.

Senator Flynn: Yes.

The Chairman: Apparently, at least some of the workers thought that the employers were violating the agreement

Senator Flynn: The agreement, but not the law.

The Chairman: . . . violating the agreement and, therefore, violating the law.

Senator Flynn: No, no. You are not violating the Labour Code when you are violating only a provision of a collective agreement that is not compulsory. An arbitration clause is compulsory, but not the question of deployment of employees. You have to make that distinction. That is the only point I wanted to make. I respect the judgment of the minister. I am just critical of the timing. I may be wrong and he may be right, but I just wanted to put that on the record.

The Chairman: Do you have any other questions, Senator Flynn?

Senator Flynn: No. There was only one more question, and I think the minister will not reply on it, because it is a problem that

the cabinet will have to decide. I refer to the question of having permanent machinery to deal with strikes, legal or illegal, which are becoming harmful to the public; and especially if this should occur during the period between parliament.

The Chairman: There is in the new Labour Code a provision now, I understand—it has not been sanctioned yet—to deal with such situations during periods of dissolution.

Senator Flynn: Which one?

Senator Benidickson: I was going to speak to Senator Flynn's remarks. Does this not involve what we had before us in the Senate? I have forgotten the disposition of it. It was Senator Haig's motion, seconded by Senator Buckwold, concerning strikes and the like. It is something we can very properly do in the future.

The Chairman: In any case, Senator Flynn, I understand that you are just making a suggestion to the future government.

Senator Flynn: Oh, are you suggesting that I should not address the suggestion to the present minister?

The Chairman: Are there any further questions? If you wish to proceed more rapidly, I can put the question covering all the clauses.

Senator Smith: I move that we report the bill without amendment.

The Chairman: Shall I report the bill without amendment?

Hon. Senators: Agreed.

The committee adjourned.



Fourth Session—Twenty-eighth Parliament

1972

THE SENATE OF CANADA

STANDING SENATE COMMITTEE

ON

HEALTH, WELFARE AND SCIENCE

The Honourable MAURICE LAMONTAGNE, P.C., *Chairman*

I N D E X
OF PROCEEDINGS
(Issues Nos. 1 to 4 inclusive)

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INDEX

BIL C-183

AN ACT TO AMEND THE CANADA LABOUR CODE

Bill C-183

Discussion

Section 107 —“Dependent contractor” 3:19-20

Section 114 —Head office 3:21

Section 149(1)—“Technological change” 3:8-12

Section 149(2)—Application of sections 150, 152 and 153 3:17

Section 150(1)—Notice of technological change 3:26

Section 150(2)—Contents of notice 3:25

Section 151(1)—Application for order respecting technological change 3:26

Section 152(1)—Application for order to serve notice to bargain 3:13-14, 3:19, 3:23

Section 152(2)—Order to serve notice to bargain 3:10

Section 155(1)—Provision for final settlement without stoppage of work 3:24

Preamble, purpose 3:7

Report to the Senate without amendment 3:5

Canada Labour Code

Non-applicable public servants 3:15, 3:16

Canada Labour Relations Board

Composition 3:20

Head office, meetings 3:20-21

Independence 3:19

Collective agreements

Final settlement without stoppage of work, provision 3:24

See also

Technological change

Conciliation board

Procedures 3:24

Construction industry

Special provisions probable 3:15

“Dependent contractor”

Trade unions, certification 3:19-20

O’Connell, Hon. Martin, Minister of Labour

Technological change, job security, legislation, statement 3:21

Task Force on Labour Relations

Recommendations, legislation, differences 3:22-23

Technological change

Collective bargaining process, relationship 3:9, 3:11, 3:13-14, 3:17-19, 3:23-25

Definitions 3:8-12

Effect on job security, retraining 3:8, 3:10-12, 3:21-22

Legislation, other countries 3:16

Notice to Canada Labour Relations Board, contents, options, penalty 3:10, 3:13, 3:25-26

United States

Legislation, technological change 3:16, 3:17

Railway Labour Act 3:16

Woods Task Force*See*

Task Force on Labour Relations

BILL C-195

AN ACT TO AMEND THE ADULT OCCUPATIONAL TRAINING ACT

Adult occupational training

Age limit 2:13

Allowances, eligibility, financing 2:7, 2:14

Cost 2:13-14

Courses

Geophysical 2:10

Limitation duration, not number 2:8, 2:10, 2:12

Definition 2:12

In-industry training 2:13

Native people 2:10

Provincial jurisdiction 2:13

Trainees

Employment after course, statistics 2:8-9, 2:11

Follow up after course 2:7-8

Number 2:7

Women, new legislation, effect 2:9

Bill C-195

Aim 2:7

Report to Senate without amendment 2:5

Canada Manpower Centres

Job vacancies, provincial, national clearance system 2:11

Training programs

Educational up-grading 2:10

Federal-provincial agreements, costs 2:13-14

Unemployment Insurance Commission, co-ordination 2:12

Women counsellors in Manpower training program 2:9-10

See also

Adult occupational training

New Brunswick

Task Force, Manpower training, comments 2:8-9

BILL C-207

AN ACT TO AMEND THE OLD AGE SECURITY ACT

Bill C-207

Discussion

Clause 6—Where basis of Consumer Price Index changed 1:21

Clause 7—Transitional 1:21

Implementation, imperative 1:7, 1:8, 1:13

Report to the Senate without amendment 1:4

Guaranteed Income Supplement Payments

Cash benefits, annual, comparison with other countries 1:17, 1:19-20

Cheques, retroactivity, critical problems, deadline 1:7-10, 1:15-16

Consumer price index, adjustment, effect 1:18-19, 1:21

Cost, one year cost-of-living increase 1:17-18

Income test

Cut-off levels 1:18

Foreign pension earned or contributed to 1:21

Information of changes

Inserts with cheques, deadline 1:11, 1:12, 1:15

Mailouts, deadline, preparation 1:11, 1:15

Newspaper advertisements 1:11, 1:13

Recipients

Deceased, cheque procedure 1:18

Eligibility 1:21

Number 1:7

Health, Welfare and Science Standing Committee

IBM, motion to appear before Committee, defeated 1:14-15

Procedure 1:7, 1:9, 1:12

IBM

Cheques, deadline, negotiations 1:10-11, 1:13-15

National Health and Welfare Department

Administrative costs 1972/73 1:15

Old Age Security Pensions

Cash benefits, annual, comparison with other countries 1:17, 1:19-20

Cheques, retroactivity, mechanical process, critical problems, deadline 1:7-8, 1:15-16

Consumer price index, adjustment, effect 1:18-19, 1:21

Cost, one year cost-of-living increase 1:17-18

Information of changes

Inserts with cheques, deadline 1:11, 1:12, 1:15

Mailouts, deadline, preparation 1:11, 1:15

Newspaper advertisements 1:11, 1:13

Portability, reciprocal arrangement other countries 1:21

Recipients

Deceased, cheque procedure 1:18

Number 1:7

BILL C-230

AN ACT TO PROVIDE FOR THE RESUMPTION OF THE OPERATION OF THE PORTS OF MONTREAL, TROIS-RIVIÈRES AND QUEBEC

Bill C-230

Discussion, Clause 7: Postponement of job security plan 4:5, 4:7, 4:8

Purpose 4:7

Report to the Senate without amendment 4:4

Canada Labour Code

Collective agreements, dispute, arbitration 4:6-7, 4:8-9

Penalties, lockout, strike 4:7-9

Provision, new, strikes during dissolution of Parliament 4:10

Criminal Code

Recourse 4:7

Labour dispute

Background 4:5-7, 4:8-9

O'Connell, Hon. Martin, Minister of Labour

Statement 4:5

Appendix

—Adult Occupational Training Statistics 2:15-20

Witnesses

—Armstrong, Robert, Special Assistant to the Deputy Minister, Dept. of Labour 3:10, 3:13, 3:15, 3:22-23

—Bergevin, J. B., Senior Assistant Deputy (Welfare), Dept. of National Health and Welfare 1:12, 1:15-16

—Blais, J. A., Assistant Deputy Minister (Income Security), Dept. of National Health and Welfare 1:18

—Kelly, W. P., Assistant Deputy Minister (Industrial Relations), Dept. of Labour 3:14-19, 3:23-25, 4:8

—Meyer, H. J., Acting Director, Manpower Training Branch, Dept. of Manpower and Immigration 2:7-14

—Mitchell, R. W., Director of Legal Services, Dept. of Labour 3:10, 3:12, 3:15-16, 3:19-20, 3:23, 3:25

—O'Connell, Hon. Martin, Minister of Labour 3:18-22, 4:5-9

—Willard, Dr. J. W., Deputy Minister (Welfare), Dept. of National Health and Welfare 1:7-8, 1:10-21

—Wilson, Bernard, Deputy Minister, Dept. of Labour 3:7-11, 3:20-27

—Yeomans, D. R., Assistant Deputy Minister, Operations Services, Dept. of Supply and Services 1:8-11

The Honourable Senators

Chairman:

—Lamontagne, Maurice (Inkerman) 1:7-22; 3:7-18, 21-25, 27; 4:5-6, 8-10

Acting Chairman:

—Carter, Chesley W. (The Grand Banks) 2:7-9, 14

—Benidickson, William Moore (Kenora-Rainy River) 4:5-10

—Bonnell, Mark Lorne (Murray River) 2:12-14

—Bourget, Maurice (Les Laurentides) 2:8, 13

—Cameron, Donald (Banff) 2:10; 3:16-27

—Fergusson, Muriel McQ. (Fredericton) 1:20; 2:8-9

—Flynn, Jacques (Rougemont) 1:7-14; 4:5-10

—Forsey, Eugene A. (Nepean) 1:9-10, 20

—Goldenberg, H. Carl (Rigaud) 3:9-10, 12-18, 21, 25

—Grosart, Allister (Pickering) 1:18; 3:7-19, 23-27

—Hastings, Earl A. (Palliser-Foothills) 1:12; 3:21, 25

—Hicks, Dr. Henry D. (The Annapolis-Valley) 3:23

—Inman, F. Elsie (Murray Harbour) 2:7-8, 10, 13

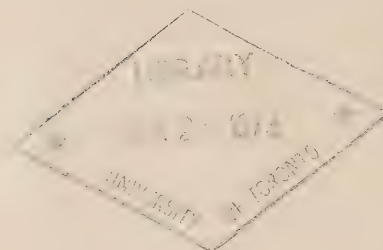
—Kinnear, Mary E. (Welland) 2:11

—Langlois, Léopold (Grandville) 1:13-14, 16

- Lawson, Edward M. (Vancouver) 3:12-21, 23-24, 26-27
- Macdonald, John M. (Cape Breton) 2:7, 11-12; 3:7
- Martin, Paul (Windsor-Walkerville) 1:10-13, 15-17, 19-22; 3:8, 10-12; 4:5
- Norrie, Margaret F. (Colchester-Cumberland) 2:11-12, 14
- Phillips, Dr. Orville H. (Prince) 1:8-17, 19-20
- Quart, Josie D. (Victoria) 2:10-11
- Smith, Donald (Queens-Shelburne) 2:7-10, 14; 3:7, 14-15
- Thompson, Andrew E. (Dovercourt) 1:14-15, 17, 19, 21
- Yuzyk, Paul (Fort Garry) 2:7-10, 12-13

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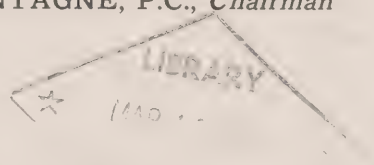
FIRST SESSION—TWENTY-NINTH PARLIAMENT

1973

THE SENATE OF CANADA
PROCEEDINGS OF THE
STANDING SENATE COMMITTEE ON
**HEALTH, WELFARE
AND SCIENCE**

The Honourable MAURICE LAMONTAGNE, P.C., *Chairman*

No. 1



THURSDAY, FEBRUARY 8, 1973

Complete Proceedings on Bill C-124,

"An Act to amend the Unemployment Insurance Act, 1971 (No. 1)".

REPORT OF THE COMMITTEE

(Witnesses:—See Minutes of Proceedings)

THE STANDING SENATE COMMITTEE ON
HEALTH, WELFARE AND SCIENCE

Chairman: The Honourable Maurice Lamontagne, P.C.

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Blois	Hastings
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Cameron	Lamontagne
Carter	McGrand
Croll	Smith
Denis	Sullivan
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Fournier (<i>Madawaska- Restigouche</i>)	van Roggen (20)

Ex officio Members: Flynn and Martin

(Quorum 5)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, Wednesday, February 7, 1973:

"Pursuant to the Order of the Day, the Honourable Senator Buckwold moved, seconded by the Honourable Senator Rowe, that the Bill C-124, intituled: "An Act to amend the Unemployment Insurance Act, 1971 (No. 1)", be read the second time.

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative, on division.

The Bill was then read the second time, on division.

The Honourable Senator Buckwold moved, seconded by the Honourable Senator Kinnear, that the Bill be referred to the Standing Senate Committee on Health, Welfare and Science.

The question being put on the motion, it was—
Resolved in the affirmative."

Robert Fortier
Clerk of the Senate

Report of the Committee

February 8, 1973

The Standing Senate Committee on Health, Welfare and Science to which was referred Bill C-124, intituled: "An Act to amend the Unemployment Insurance Act, 1971 (No. 1)", has in obedience to the order of reference of February 7, 1973, examined the said Bill and now reports the same without amendment.

Respectfully submitted.

Maurice Lamontagne
Chairman

Minutes of Proceedings

Thursday, February 8, 1973

(1)

Pursuant to adjournment and notice the Standing Senate Committee on Health, Welfare and Science met this day at 9.05 a.m.

Present: The Honourable Senators Lamontagne (*Chairman*), Beaubien, Blois, Bonnell, Bourget, Carter, Croll, Denis, Flynn, Goldenberg, Hastings, Inman, Kinnear, Martin, Thompson and van Roggen. (16)

Present but not of the Committee: The Honourable Senators Aird, Buckwold, Grosart, Haig, McElman, McLean, Phillips and Walker. (8)

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel; and Pierre Godbout, Director of Committees.

On Motion of the Honourable Senator Denis, it was *Resolved* to print 800 copies in English and 300 copies in French of the proceedings of this Committee.

The Committee proceeded to the consideration of Bill C-124, "An Act to amend the Unemployment Insurance Act, 1971 (No. 1)".

The following witnesses were heard in explanation of the Bill:

The Honourable Robert Andras,
Minister of Manpower and Immigration.
From the *Unemployment Insurance Commission*:

Mr. Guy Cousineau,
Chairman.

Mr. J. W. Douglas,
Director of Legal Services.

On Motion duly put, it was *Resolved* to report the said Bill without amendment.

At 10.45 a.m. the Committee adjourned to the call of the Chair.

ATTEST:

Patrick J. Savoie
Clerk of the Committee

The Standing Senate Committee on Health, Welfare and Science Evidence

Ottawa, Thursday, February 8, 1973

The Standing Senate Committee on Health, Welfare and Science, to which was referred Bill C-124, to amend the Unemployment Insurance Act, 1971 (No. 1), met this day at 9.05 a.m. to give consideration to the bill.

Hon. Maurice Lamontagne (*Chairman*) in the Chair.

The Chairman: Honourable senators, we have with us this morning the Honourable Robert Andras, Minister of Manpower and Immigration, and Mr. Guy Cousineau, Chairman of the Unemployment Insurance Commission. I understand the minister and Mr. Cousineau are accompanied by several of their colleagues and associates.

The bill is relatively simple, and I would now entertain questions from honourable members of the committee, unless the minister wishes to make a statement first.

The Honourable Robert Andras, Minister of Manpower and Immigration: As you wish, Mr. Chairman.

Honourable senators, this is the first time I have had the opportunity of appearing before a Senate committee and I appreciate it. In fact, this is the first time I have been in this room, Mr. Chairman, which surprises me because I thought I had seen almost every nook and cranny of these buildings.

Senator Bourget: You may come back a little later.

Hon. Mr. Andras: The bill before us is extremely important, even though, as the Chairman has pointed out, it is brief in terms of its legal wording. Its purpose, as you know, is to remove the ceiling imposed on the advances to the unemployment insurance account, which amounted in the recently-amended act to \$800 million. There is urgency, of course, which I think in duty I must mention, because, until the ceiling is removed, under the present circumstances no further advances can be authorized to the unemployment insurance account, which means, bluntly, that unemployment insurance benefit payments ceased as of yesterday. Some 125,000 claimants would not have received their warrants or cheques, which they otherwise would have in the ordinary course of events. So I plead with honourable senators to give the matter their urgent attention.

Just looking at the clauses of the bill, clause 1 removes the ceiling. Clause 2 provides that the amounts that were authorized in supplementary estimates in vote L30a—which vote will ratify the payment of funds to the unemployment insurance account through the medium of Governor General's warrants—are to be deemed as advances and not appropriations, and this simply means and ensures that the funds are repayable, as are all advances

to the unemployment insurance account under the terms of the act.

I think, Mr. Chairman, that would probably lead to the value of an explanation of how the unemployment insurance account gets its revenue and, on the other hand, how it is financed.

The revenue to the unemployment insurance account comes from two sources: the first is employee-employer unemployment insurance premiums which are deducted at source, collected through the Department of National Revenue and remitted to the Unemployment Insurance Commission; and the second is the government cost of the payment of unemployment insurance benefits, and the government in this connection assumes costs related to payments above 4 per cent of unemployment nationally, and certain regional unemployment levels and certain other special benefits related to fishermen and some extended benefits that also come under the government share.

The premiums deducted through payroll and remitted through the Department of National Revenue are passed over to the unemployment insurance account on a regular basis, but in the early stages, which you have heard about, in 1972, they were passed over on an estimated basis. The facts are that the exact amount of premium deduction, and therefore premiums available to the unemployment insurance account, for the year 1972 will not be known until all the T-4 slips are in and calculated and analyzed. This, by our best estimate, will probably not be until mid-summer 1973.

In the meantime the Department of National Revenue and the Unemployment Insurance Commission have worked out an estimate of those premiums, and that is the amount that is remitted, on account, as it were, to the unemployment insurance account on a monthly basis, and has been calculated at about \$60 million a month. However, as I say, we will not know until mid-summer of 1973 exactly how much that is. In this case, that is mainly because of the newness of this vastly changed unemployment insurance program stemming from the revisions to the act in 1971.

The government's share of the cost of benefits paid, which I described a minute ago, also will not be known until after the fact, and they are not, in fact, payable to the unemployment insurance account until the end of the fiscal year following the calendar year in which the benefits were paid. That is to say that the government's share of the unemployment insurance benefits paid out in the calendar year 1972 will not be payable until after April 1, 1973. So, both in the employer-employee premium income and in the income arising from the government's share of the cost of the plan, we are, to a degree, flying

blind for the first year; and in the case of the advances from the government's share of the cost for about 15 months—that is to say, from January 1, 1972 to March 31, 1973.

In the meantime, there has to be a method of financing the operations of the commission, and that is where this particular bill comes into play. In other words, it is to provide funds in the absence of the payment—or at least recognizing the delay in actual payment—of the government's share of the cost for 15 months from the beginning of the calendar year.

Also, in the light of the imprecision of the calculation of employer-employee premiums which are being paid into the account, there has to be a method of financing the operations in the meantime. That, then, is the provision under section 137 of the act which says that the Minister of Finance will, in fact, advance funds to the unemployment insurance account to provide for payment of benefits.

I might also draw your attention to the fact that under section 135 of the act it is mandatory by statute that the government pay unemployment insurance benefits to people entitled to such.

Section 137 includes, of course,—and now with hindsight I say this quite frankly and quite candidly, to my regret and certainly that of my colleagues—a ceiling of \$800 million placed on the advances, at the time the act was revised rather drastically in 1971. I have indicated in the other place that we, as a government, have to take our lumps on two counts, and indeed we have been taking them: one on the imposition of the ceiling in the bill, in the first place, which I think was unfortunate, and I will go on to describe why in a minute; and the second because I do not think we get first prize in the estimates and forecasts we indulged in a year and a half ago when dealing with the act before the committee and in the house. But, in all fairness, I think it should be mentioned that there are many variables.

It is, and remains, a very difficult matter to forecast with any precision. There were changes and amendments to the act that were not contemplated in the white paper on which the calculation of cost was based. I will have to ask your indulgence to have the commission chairman interject here if I miss any of these figures. Certainly, the amendments to the act which took place after the government issued the calculations of cost in the white paper were valued at about \$290 million annually. The other errors—and it is still very difficult to get a handle on this—in future forecasting, arose from the fact that past history indicated that the length of time that claimants would be drawing benefits through being out of work led us to believe that that, in the new act, would be about 15 weeks maximum. In fact, it turned out to be about 17 weeks. The growth in the labour force was at a faster rate than anybody had calculated, including the Economic Council of Canada, and while our calculations of the benefits paid out were based on several different levels of unemployment, including one at 6.3 per cent which was what resulted in the end, the 6.3 per cent eventually applied to a larger labour force, and obviously threw out the calculation of the total number of unemployed in

1972 and, consequently, the number of people claiming unemployment insurance.

The major variation in cost, however, arose from the difference in the length of time—the 15 weeks calculated to 17 weeks actual—that the claimants were receiving benefit. I believe the cost of that is approximately \$480 million.

Then there was the question of higher earnings. As you know, benefits are based on 66½ of the employee's past weekly earnings—in some cases 75 per cent, but generally speaking 66½ per cent—and the amount of those weekly earnings went up faster in 1972 than had been estimated. The difference resulting from those higher earnings resulted in a cost of about \$130 million. The larger labour force I referred to boosted the cost of benefits by some \$24 million.

There was an offsetting saving from the original calculations of the cost of sickness benefits which cost less than estimated, by some \$40 million. Consequently, the total variations in these factors—the changes in the act, these amendments, the longer duration of benefit payments, the higher earnings and the higher labour force, less the savings on sickness benefits—produced an identifiable bulge from our original estimates of \$884 million.

The benefit payouts in 1972 amount to \$1,879 million. The calculated estimated cost of administration of the plan is now said to be approximately \$120 million. This would make a total cash requirement for 1972, the calendar year, of just under \$2 billion. Of that sum, \$1.01 billion is chargeable to the employer-employee premium account which looks after the benefits payable up to a level of 4 per cent, plus the cost of the administration of the plan. The balance of some \$890 million will represent the government's share of the cost, and it is that government's share of the cost, some \$890 million, which is not by law payable to the commission until April 1, 1973.

The employer-employee premium account started off at the beginning of 1972 with an overhang and a remaining balance from the old act, or the old program, of \$236 million. The premiums received by calculation—and, again, this will not be confirmed until mid-summer 1973 because of the nature of the method of receiving them through the Department of National Revenue—would indicate a shortfall in the employer-employee account of over \$400 million. Due to the starting balance—which, incidentally, was lower than had been expected in 1972 because of the run-out of the old act—there was a cash shortfall of about \$158 million. In fact, that \$158 million shortfall in the employer-employee premium account plus the government's share of the cost of the plan, due to these factors to which I have referred, had to be financed by advances. These advances are now in excess of the \$800 million ceiling.

Hindsight tells us that the \$800 million ceiling was not just politically—and here I will be quite candid with you—unfortunate, but it is an unwieldy and unworkable measure to place in a bill like this. This bill has, on the one hand, a mandatory requirement to pay benefits; this is not discretionary. I have had experience myself as the minister responsible for the National Housing Act, for instance, which places statutory ceilings on different

types of loans under different types of programs. This is quite legitimate and quite operable for the very reason that CMHC has the power to decline to make a loan. They can say, "We cannot make this loan because we are in excess of the statutory ceiling." On the one hand in the Unemployment Insurance Act is the contradiction that under section 135 you must make the payments; and I cannot visualize anybody deliberately not making payments to unemployed people, in this day and age, who are entitled to benefits. On the other hand, there is a ceiling placed on us. We are asking that this ceiling be removed.

We have looked at the possibility of another ceiling or of raising the ceiling; but it becomes a rather ridiculous exercise because either you have to set that ceiling at an amount which leaves no doubt that it will not be exceeded, in which case it does not offer the value which was intended—that is, some measure of control; or you have to come back to the House of Commons for an amendment to the act every year. That is about what it amounts to.

We do not think, on the other hand, that this does remove, as some people have suggested, the opportunity and power of Parliament to chastise the government or call them to task, or review the expenditures under the unemployment insurance plan, or do something about it. There are many remaining measures that permit the exercise of Parliament's prerogative.

The first one I would refer you to is the main estimates. That is to say, we must come before Parliament with the main estimates of the government's share of the cost of the plan and get approval of those estimates. This can give rise to discussions, debates and votes that Parliament would wish to have.

There are many other occasions on which the government can debate the issue: there is the annual report of the Unemployment Insurance Commission, required by the act, which must be tabled by September 30; there is the certification of the financial statements of the Unemployment Insurance Commission, the certification by the Auditor General, which has to be made available to Parliament regularly; there are the monthly statements by Statistics Canada of the benefit payments which provide a running record of what is taking place; there is the monthly financial operations statement of the Department of Finance; and there are yearly public accounts.

Honourable senators, perhaps I have gone on longer than you had expected. I hope it has given you some indication of the background leading to our request to you and to the members of the other house to proceed with this bill. I would be very happy to endeavour to respond to any questions you may have. If they are of an administrative or technical nature, we will have the officials of the Unemployment Insurance Commission deal with them.

The Chairman: Thank you very much, Mr. Minister.

Senator Flynn: Mr. Minister, this may not be the most important problem regarding this bill, but I was interested in the fact that you said it is only when all the T-4 slips are calculated later this year that you will know what

the amount of the premiums paid by the employers and employees will be.

Hon. Mr. Andras: With precision, that is correct.

Senator Flynn: Am I wrong in thinking that the employers send in their contributions monthly and that there must be some sort of tabulation made of these receipts monthly?

Hon. Mr. Andras: Yes, it is based on this experience that we operate the estimates which permit passage of money from the Department of National Revenue to the accounts. I am saying there may be a variation, but we do not anticipate it will be very much.

Senator Flynn: You know how much the Receiver-General receives for that account every month?

Hon. Mr. Andras: That is correct. But I would, with your indulgence, ask the commission chairman to comment, because the accuracy of this has been a worry to us, and it had to be verified two or three times during 1972.

Mr. Guy Cousineau, Chairman, Unemployment Insurance Commission: Honourable senators, when the act was introduced, in order to facilitate the employers' remittances, the employers remit one cheque to the Department of National Revenue which includes the Canada Pension Plan, income tax, and the UIC premiums. It is only at the end of the year, when the employers turn in their T-4 slips covering all the employees, and when these are tallied up, that you know exactly, or with some precision, how much is the share to CPP, to the income tax department, and to the UIC. So, the employer sends in one cheque, but for his own records, he shows on his tally, in order to reconcile his own books with the T-4 slips, how much applies to CPP, UIC, and the income tax. But from the standpoint of income tax it is only at the end of the year that it is reconciled.

Senator Flynn: In other words, the employer is not bound to send a detailed account of the manner in which the amount is calculated?

Mr. Cousineau: No, he sends one cheque.

Senator Flynn: This bulk amount includes contributions to income tax, to the Canada Pension Plan and UIC premiums?

Mr. Cousineau: That is right.

Senator Goldenberg: Is the T-4 form the one which is due on February 28? There is a form which the employer sends in, and gives to his employees, which is due on February 28.

Mr. Cousineau: That is right. These are the T-4 forms that will be remitted.

Senator Flynn: It is really surprising that the employer is not required to give some explanation of the amount he is forwarding. It is not required by the act? How is the requirement to pay premiums to the Receiver General worded?

Mr. Cousineau: Each employer has been supplied with CPP tables and income tax tables, but from the standpoint of income tax this is reconciled once a year. However, during the course of the year they have periodic audits, and it is on the premise of the employer that these are checked. However, a global check is done once a year.

Senator Flynn: Do you mean the tables supplied to the employers include unemployment insurance and income tax?

Mr. Cousineau: No, they are separate tables. There is a table for CPP.

Senator Flynn: The employer would be able to calculate how much he remits.

Mr. Cousineau: Yes.

Senator Croll: I sign some of these cheques, and when they are brought to me they indicate so much for unemployment insurance, so much for income tax, and so much for the other. When we send in the cheques we also indicate what it is for on the cheques. You say you do not receive that at all? We indicate what it is for and the total amount—\$17, \$20, \$40—and this adds up to so much on the cheque.

Mr. Cousineau: I will qualify that statement. The department of National Revenue deposits a cheque, but there is no further reconciliation as to the amounts that are shown by the employers until the end of the year.

Senator Flynn: National Revenue could do this, however.

Mr. Cousineau: Sir, it could be done; but many employers do not comply, as I understand, by giving that breakdown to National Revenue. At the end of the year National Revenue tells me their system of reconciliation is good enough and that if there is any shortage or overage this could be tackled immediately.

Senator Croll: But the form requires you to detail these amounts. Would you please ask your assistant? The form requires you to detail these amounts when you send it in. You do not merely send a cheque to them for any amount. It requires you to set it out, so the calculation must be there.

Senator Flynn: It is not very important, but I think improvement could be made in the calculation of the amount which is to be remitted to the UIC.

Mr. Cousineau: We can take that up with the Department of National Revenue. My understanding is that it has not been enforced.

Hon. Mr. Andras: I understand your comment, senator; it is a new facet to be explored.

Senator Flynn: Would you explain, Mr. Minister, exactly what the government share is?

Hon. Mr. Andras: Yes. The act provides that when the level of unemployment nationally exceeds 4 per cent, as

calculated each month on the labour force survey, then certain extended benefits are available to claimants. There is also a section of the act which provides that, where the regional—and there are sixteen regions in the country for this purpose—unemployment exceeds the national level by a certain percentage, the number of weeks of extended benefits increases or decreases as the excess over the national unemployment rate varies in a region. Added to this are the special payments of fishermen's benefits, plus certain of the extended benefits, such as sickness, maternity and extended benefit period. There is also the labour force attachment in the case of a major attachment to the labour force claimant, that is 20 weeks or more. There are certain extended benefits, but these are the factors that come into play.

The costs attributable to those special measures are payable by the government under the act. The remainder of the costs are chargeable to the employer-employee premium account, as is the cost of administration. This is a variation of the new act from the old act. In the old act the government paid 20 per cent of the combined cost, which is from the beginning.

Senator Flynn: What do you mean by the additional benefits when the rate of unemployment goes beyond 4 per cent? Do you mean that whenever 4 per cent of the labour force is unemployed there are some who can draw benefits that they could not draw when the unemployment rate was less than 4 per cent?

Hon. Mr. Andras: Yes. In essence, the assumption is that when unemployment exceeds that level it becomes more difficult for a person to find a job. It is not as much a personal factor, that he or she is or is not capable of finding a job. Some other, more general condition has entered the picture. Therefore the government is saying it will allow additional time. The amount of the benefits per week does not change, but the length of time during which unemployment insurance benefits can be drawn does increase if the national rate is in excess of 4 per cent, or if the regional rate is in excess of the national rate.

Senator Flynn: It seems to create a vicious circle though.

Senator Carter: Are these benefits paid, when the national unemployment exceeds 4 per cent, in a province where the rate is less than 4 per cent, where it is 3 per cent, for instance? Are these extra benefits, or the additional duration of payments, made in a place where the unemployment is below 4 per cent, below the national average?

Hon. Mr. Andras: The regional rate must be in excess of the national rate, and the national rate must be in excess of 4 per cent, so those in a province having a rate below that would not receive the extended benefit.

Senator Carter: By "region", do you mean one of five regions?

Hon. Mr. Andras: No, for this purpose we are speaking of sixteen regions. It is more decentralized than that.

Senator Buckwold: May I ask the minister a question relating to the deficit position, so-called, of the fund? We heard in our discussion that we are in fact in this very serious deficit position of—one remark was \$2 billion and the other \$1 billion. I wonder if the minister could indicate the actual deficit position? I know that you went through it a little earlier, but you might explain it a little further.

Hon. Mr. Andras: It really requires some definitions of the word. The only real deficit that exists in this situation is that in the employer-employee account itself. We started on January 1, 1972 with \$236 million in that account, which was the carry-over from the liquidation of the former account and the former program.

Senator Beaubien: That was a credit.

Hon. Mr. Andras: That was a credit of \$236 million cash chargeable in 1972 to the employer-employee account. That is the difference between the government's share of the pay-out and the administrative cost in 1972 of \$1.01 billion, plus a calculated estimated \$120 million of administrative costs of the program. So we have \$1,120 million chargeable to the employer-employee premium account. This was premium deductions.

There was received from the Department of National Revenue, on account of premium deductions for the current year 1972, \$715 million. That, plus the \$236 million, was available to meet the charges to that account. That is \$951 million, leaving a cash deficit in that of \$158 million. That is an accounting short-fall of \$394 million, but a cash deficit, because of the balance available at the beginning of the year, of \$158 million. That, Senator Buckwold, is the only deficit in the sense of the word.

Senator Grosart: In one sense of the word.

Hon. Mr. Andras: Well, the others are advances. It is simply advances to finance the operation until these other funds come in. So it is not a deficit at all; this is a deficit, I believe, in accounting terms. That possibility was anticipated in the act, and provision is made to adjust the employer-employee premium rate to meet that. There are two facets to this: in fact, the commission is required to establish the best possible forecast of the cost of the employer-employee account requirements, that is 4 per cent and under, for the following year, base their rate on that, make that change and implement it before January 1 so that the tax tables to which we referred can be printed and issued. That was the requirement under section 63 of the act, which caused the commission to announce the rate increase in December of last year. That rate increase is calculated to bring in an additional \$100 million in 1973. It is intended and it is only required that that rate increase provide for the following year.

Several factors will be brought to bear in this regard. First of all, in this first year of experience very many rather difficult to calculate developments are taking place. There are many new entrants to the scheme, because it was made almost universal with the exception of the self-employed. The new entrants were given a preferred benefit rate of 40 per cent during the first year, 60 per

cent for the next year, then 80 per cent, taking about four years in which they would climb to the 100 per cent point premium rate that those who had already been in the scheme would pay. The number of new entrants turned out to be quite different from the original calculation, perhaps related to the shifting nature of employment in this country, the fact that many have gone into public service in the various levels of government, and a whole series of things like that.

So this concession, as it were, to the new entrants, caused a reduction in the premium as calculated for that fund. But in 1973 the increase in that benefits special rate, preferred rate, for those new entrants goes from 40 per cent of the regular premium to 60 per cent of the regular premium. So there will be increased revenue from that source.

The increase in the premium rate itself, announced in December, from 90 cents for the employee to \$1 for the employee per \$100 of weekly earnings, which triggers the employer's contribution as well, will bring in about \$100 million; and there is, of course, the fact that all of this is applicable to an increased weekly wage, which the weekly wage index indicated had gone from \$150 to \$160 a week. That will bring in additional revenue.

So we calculate, to our best understanding, that in 1973 the employer-employee account premiums will look after the requirements in 1973. The deficit to which we referred a minute ago by the act will be picked up, must be picked up, by the end of 1975 or 1976. It was given a future. Recognizing the imprecision of the first year or so's experience, eventually that premium will be based on a three-year moving average. But we have only had one year's experience.

Senator Buckwold: In other words, what you are saying is that the cash shortfall is \$150, which in fact will be picked up by the employee-employer fund, and will not be paid by Canadian taxpayers. What Canadian taxpayers pay...

Hon. Mr. Andras: The government cost above 4 per cent.

The Chairman: There were many occasions in the past where advances were made by the government to the fund, and they have all been reimbursed.

Hon. Mr. Andras: In the past there have been advances to the fund. It was a different scheme. The government was paying 20 per cent of the cost as you went along from \$1. This plan for 4 per cent or under is totally borne by the employer-employee premium account, and it is made possible by the universality of coverage that was introduced into this new plan.

Senator van Roggen: So it is completely self-liquidating up to 4 per cent, and it is not costing the taxpayers anything. Beyond 4 per cent the taxpayers pay not the total amount for anybody unemployed over 4 per cent but the extended weekly benefits that result from that.

Hon. Mr. Andras: That is right. For accrued formula calculation, if the unemployment rate is 6.3 per cent—we all hope we shall not be talking about that sort of

thing in the future, but that is the unhappy fact of life in 1972—then a rough calculation would be a ratio of 6.3 to 4, and the excess of 2.3 of the cost of the plan would be borne by the government. This is a rough calculation.

Senator van Roggen: It would be only the additional weeks?

Hon. Mr. Andras: The 2.3 which is above the 4 per cent.

Senator Flynn: It means the same thing.

Senator van Roggen: I have always been under the impression, as a layman reading newspapers, that the government paid the total amount of the expenditures of the fund for all those people unemployed over and above the 4 per cent level.

Senator Flynn: No. Where would you draw the line? It means the same thing.

Hon. Mr. Andras: The government's share of the cost is that attributable to the benefit pay-outs that are attributable to unemployment in excess of 4 per cent. The 4 per cent is chargeable to the employer-employee premium account, and as the cost rises above that it is picked up by the government.

Senator van Roggen: Every penny?

Hon. Mr. Andras: Yes.

Senator van Roggen: I was left with the impression, from something you said earlier, that at 4 per cent you escalated the length of the benefit from 10 weeks to 15 weeks, or whatever it might be, an extended number of weeks, and that extended period was the only thing picked up.

Senator Grosart: Is it correct to say that the cost to the government, or the government's share, over and above the cost to the employer and the employee is \$890 million in this calendar year?

Hon. Mr. Andras: It was for the calendar year 1972. I must say approximately...

Senator Grosart: \$884 million is, I think, the latest figure.

Senator van Roggen: That would be for all payments to all of those people.

Senator Grosart: That is what the account will cost the government.

The Chairman: Let us have some order!

Senator Croll: Let me see if I can get some clarification from the minister.

The Chairman: We should direct our questions to the minister.

Senator Croll: The employer-employee pays up to 4 per cent.

Hon. Mr. Andras: Plus the cost of administration.

Senator Croll: Yes. Beyond that, whether it is extended or augmented, normally the government pays—is that correct?

Hon. Mr. Andras: That is correct. Under any circumstances, 4 per cent or less, the special arrangement for fishermen is paid for by the government, until we have a better arrangement.

Senator Grosart: In view of the fact that I was probably the one who said the fund went broke for \$1 billion, perhaps I should ask a few questions to substantiate that statement. You gave two deficit figures: the accounting deficit of \$394 million, and the actual cash deficit of \$158 million. I understand what those figures are. I then understood you to say that is all the deficit is. I am suggesting to you that you can define "deficit" in other ways. We have two kinds of deficit here, but in business a shortfall from your budget forecast—certainly is my business—is called a deficit from budget. I am suggesting to you that the deficit here is actually something in the neighbourhood of \$900 million, the shortfall from the anticipated result at the end of the year. The reason I say that is, it relates very directly, of course, to the \$800 million permissible advance. At some time in the forecasting of how this fund would operate, am I correct in saying that the assumption was that the income from the employer-employee premiums might be in the neighbourhood of \$715 million? There would then be some amount due from the government. Because the advance was set at \$800 million, the assumption was that the government's share would be somewhere between \$715 million and \$800 million. Is that not the reason the advance was set at \$800 million?

Hon. Mr. Andras: Yes, I believe so, with one other calculation—it is axiomatic but should be mentioned—and that is the calculation of what the benefits paid out would be.

Senator Grosart: I am not questioning for one moment that a lot of things happened through no fault of anyone in particular. There were all kinds of changes.

Hon. Mr. Andras: There is no doubt, senator, that the \$800 million, at the time it was set, was calculated to be beyond what was expected to be needed by about \$100 million. That was inaccurate—

Senator Grosart: Whether it was inaccurate or not, I am merely saying that that was the forecast; that was the justification for setting it at \$800 million. I am sure you recall—and I ask you if you recall, sir—the evidence of the officials to justify that figure of \$800 million. Did they not say, in effect, that they had taken the worst possible unemployment case and added a \$100 million or so? That was the evidence, was it not?

Hon. Mr. Andras: Yes, that was the evidence.

Senator Grosart: So the assumption was that in the worst possible case of unemployment, "Add \$100 million to that and you have \$800 million, which will handle it." What I am saying is that the justification for my general statement that the fund went broke for a billion was

the fact that there is another \$890 million due over and above that \$800 million.

Hon. Mr. Andras: I do not argue with you about the \$890 million. I would argue with you—and I suppose we would never reconcile it because of the difference of opinion—

Senator Grosart: Words.

Hon. Mr. Andras: —as to the fund going broke for a billion. The fund did not exist in that sense—

Senator Grosart: There is no fund to go broke; there is an account to go broke.

Hon. Mr. Andras: That is correct.

Senator Grosart: I wonder if I could ask another question, Mr. Chairman?

Mr. Minister, you said that one of the protections you saw, if the ceiling was removed, was the fact that some provision would be made in the main estimates and, presumably, in an appropriation bill, for whatever amount might be due during the year to the fund in the way of advances from the Minister of Finance.

Hon. Mr. Andras: I would put it in a slightly different way. There has to be the reconciliation of the government's share of the cost of the program. That has to be made into an appropriation at the proper time, and that is the main estimates. The government's share is not payable until the end of the fiscal year following the calendar year. That is the point at which you can say, "Horrors, we will not pass this appropriation!"

Senator Grosart: Could I ask this, then: If \$5 billion was needed, to take an exaggerated case, after the ceiling was removed, instead of, let us say, \$1 billion, at what point would it be mandatory for Parliament to be informed of that situation? Mandatory! I am not referring to it appearing some place in the way of estimation or implication. At what point would it be *mandatory* for the government to inform Parliament of that situation?

Hon. Mr. Andras: First of all, it is mandatory that these other points which you have discussed are tabled. They are required to be tabled in Parliament, so Parliament has access to them. It is mandatory, so that information flow would be there; it would be known.

As a consolidated statement in terms of an analysis and it being wrapped up and presented naked for everybody to see, the main estimates, I presume, would be the first situation under which that would develop. That would be, as I have said, after April 1.

Senator Flynn: The monthly payments made by the commission are published every month, are they not?

Hon. Mr. Andras: Yes. Also, the financial operation of the Minister of Finance is published every month, which includes this, and the Auditor General's certification of the financial statement has to be tabled, as does the annual report of the commission.

Senator Grosart: The annual report comes later. I am asking you at what stage it would become necessary for Parliament to be informed that an extraordinary situation had taken place.

Hon. Mr. Andras: I think the monthly statement indicates this, but certainly as an absolute story, the main estimates.

Senator Grosart: Let me go beyond that and ask you this: At what point would Parliament be given the opportunity to appropriate that additional money?

Hon. Mr. Andras: In the main estimates.

Senator Grosart: Let us say, to take an example, the main estimates made provision for \$2 billion and by June \$5 billion was required. In that instance would there be supplementary estimates, or what would happen? I am looking at this from the point of view of control.

Hon. Mr. Andras: It is a *post facto* reconciliation under those circumstances. The payment of benefits would go on under the requirement of section 135 of the Act. Mind you, every month Parliament is being informed of exactly what is taking place in terms of benefits paid out, both on an accumulated and monthly basis. This is very simple to calculate, and could be brought to the attention of all members on any one of a number of occasions. Insofar as the main estimates are concerned, they represent the approval, or otherwise, by Parliament of the amount that had been paid out the previous year attributable to the government's share.

Senator Grosart: But, surely, an item in the main estimates is a request to Parliament to provide this money by way of an appropriation act?

Hon. Mr. Andras: It is to provide it in an appropriation act to pay the government's share of the cost of the plan for the previous year. In the meantime, the advances had been made.

Senator Flynn: And if you go over that, you require supplementary estimates?

Hon. Mr. Andras: Yes, but you know exactly what the government's share is by that time, if you are referring to the previous calendar year.

The Chairman: It is a retroactive payment.

Senator Flynn: It may be that you would require Parliament to approve supplementary estimates with respect to the amount already spent by the commission, and Parliament would really be obliged to vote that. It would have no control whatsoever, over and above the main estimates, if additional money was required and you waited until the end to say, "Well, we did not have enough, so we poured in half a billion."

Hon. Mr. Andras: That is quite true. The alternative, of course, is to cut off unemployment insurance benefits.

Senator Grosart: That is not the alternative at all. There are more clever people than that around. Let me ask you this, then: What is the difference between that

situation and the warrant situation? I am not arguing at the moment whether you should have proceeded by way of warrants, or whether it was legal, or anything else. But you proceeded by way of warrants to obtain the money you required to implement the mandatory payments under section 135 of the act. No one worried at that point, however, about the other mandatory requirement in the act with respect to not exceeding the 800 million ceiling. That is just as mandatory as the other, but I will not argue that at the moment. You needed money and you got it by Governor General's warrant. Then, because there was a ceiling and because of certain requirements in respect of warrants, this had to come before Parliament within 15 days of Parliament sitting. This is an essential check and balance to maintain Parliament's authority over supply. Warrants are to be used in only an emergency situation. It is something that no one likes. The Public Accounts Committee in the other place said that this whole matter should be investigated because it causes trouble, controversy and political argument every time these warrants are used.

I am suggesting to you that you are now going to be in much the same position. Is the Minister of Finance going to have the authority to pay out any amount whatsoever—5 billion, 10 billion—without the authority of Parliament, with the only requirement being to report 15 months from the starting point of that pay-out period?

Hon. Mr. Andras: The first part of your statement is correct. I do not think the second part is correct. He would be required to report monthly in several forms. Inherent in this is the mandatory payments. You may disagree about the superiority of section 135 or—

Senator Grosart: I would not argue as to that, no.

Hon. Mr. Andras: Payments must be based upon the program as defined in the act; that is, to people who are qualified for reasons that are stated, at rates that are also stated in the act. The real control over what will be paid out, in terms of unemployment insurance benefits, surely must lie in the nature of the plan itself, because I just cannot visualize, ceiling or no ceiling, that you will abruptly renege on the commitment that is inherent in the act to Canadians who are unemployed.

Senator Grosart: I am not suggesting that for a minute.

Hon. Mr. Andras: The act has to be changed if you are going to control the amount that will be paid out under the act, or unemployment must be brought down, and all the other factors we have all heard about.

Senator Grosart: There are two different matters here. One is the obligation to pay out the money. There is no question of that. I am not questioning that. I am not suggesting the act should be changed in that respect, although the government is. The important thing, as far as parliamentary control is concerned, is the way that money is obtained. This is an entirely different matter, and is what the Financial Administration Act is all about, and what the traditional concept of parliamentary control of supply is all about.

What I am suggesting to you is that by this particular method you are setting up nothing but a series of

advances, with absolutely no limit to them. The normal way is to say, "We need to spend this money in this current fiscal year. Will you give us the authority to do so?" That is the main estimates. When you get into these advance situations you are going completely contrary to the main concept. You are saying, "We will spend the money and come back and ask you to approve it."

That is my question. Is those not some better way to make sure those payments are made without putting Parliament in a situation that is absolutely contrary to the basic concept of the main estimates and appropriation acts?

Hon. Mr. Andras: I do not know if you are asking me for an opinion.

Senator Grosart: I would be interested in your opinion.

Hon. Mr. Andras: I do not see a better way under these circumstances.

Senator Croll: Has it not been, for as long as you and I can remember, traditionally the practice to walk in with supplementary estimates at some time or another in order to obtain money that has already been spent? Wherein is there any distinction between what you are doing and what we have been doing traditionally for time immemorial?

Hon. Mr. Andras: The distinction is simply this, as Senator Grosart has made quite clear, and quite correctly. Under this scheme we do not place before Parliament estimates of future spending for approval. We place before Parliament the factual spending that took place the previous year and ask for its ratification. This is the whole scheme of the act as it was placed before and approved by Parliament a year and a half ago. The \$800 million ceiling, or \$1 billion ceiling, or \$1.2 billion ceiling, or \$1.6 billion ceiling, would really be a check after the fact as well. It would limit that, but it would be a check after the fact as well, and I submit at just about exactly the same time, within a month or so, as this would usually take place. If the ceiling had any sense or relevancy at all to the practical operations of this program, it would be within a month or so of the time you are examining the main estimates, which in fact has the same effect. There is the opportunity for Parliament to say, "Hey, stop the music! This plan is..." this or that. We are talking about a month or two's difference in time as to when that examination would probably take place.

I think we have to accept—at least I do, as the minister who has just been exposed to it for a month or two—that the first year's calculations left a lot to be desired. I more than ordinarily understand why now. With the intricacies, variations and many factors involved in forecasting, I would be very hesitant to make forecasts in this matter until we get more statistical experience under our belt. That is the way it stands.

Senator Flynn: Could there be a provision in the act to make it mandatory for the minister concerned, or the chairman of the commission, to forecast additional requirements of the application of the act above the

amount provided in the main estimates, and bring within a certain time a request for a supplementary estimate?

Hon. Mr. Andras: This would reverse the whole order.

Senator Flynn: I mean instead of waiting after the year. It sometimes means that we will approve expenses made twelve months before, if there is in the act a provision obliging the minister to ask for supplementary estimates on the basis of the chairman's forecast.

Hon. Mr. Andras: I am not arguing that this is technically possible. I am saying that it skirts the main control over this program. Whatever decision you arrived at, whether the supplementaries are approved in advance or approved retroactively, the control or influence over those amounts will be related to how you change that act, or how you affect the degree of unemployment. That is the fundamental issue at stake here.

Senator Flynn: I realize that.

Hon. Mr. Andras: When there is that check point of parliamentary examination or re-examination, how you implement any decisions arising from that examination has got to be in the nature of the changes made to the program, the unemployment rate or the unemployment insurance plan.

Senator Grosart: Mr. Minister, let me suggest to you that this applies to any statutory expenditure. It does not matter which act it is: if the act requires a certain expenditure, that expenditure has to be made. Surely, the whole essence of our system of estimates and appropriation bills is that we require the department to forecast the expenditures so that there can be an accounting against that forecast. If the suggestion now being followed makes sense, that in carrying out the statutory obligations of the Unemployment Insurance Commission under the act they would not be required to seek appropriation of the money until fifteen months after the beginning of the period, why cannot this then apply to any other act? That is my point.

If you look at the main estimates you find statutory expenditures, budgetary expenditures, and non-budgetary expenditures. This would now become a statutory expenditure. That is fine, but every other statutory expenditure I can think of is on the basis of an estimate. The most important book in parliamentary control is called the main estimates, and it is called that because Parliament has insisted that the cost of implementing an act be estimated and that every department should do this. I do not understand why, in this case, you are seeking to get out from under that. I do not understand why you cannot put in an estimate at the beginning of the year. You may have to seek more money, yes. Other departments do. Of supplementary estimates (A) only \$454 million of \$1.2 billion is yours, among many other departments. Sixteen other departments required supplementaries to their estimates. That is why I suggest to you, Mr. Minister—because I know you are concerned, and I have been very impressed with the evidence you have given, and the frankness of your evidence—in a completely non-political way, that I would like to see you and your officials sit

down and see if, in your ingenuity, you cannot come up with a better way than this *ex post facto* appropriation of moneys which may amount to \$2 billion to \$3 billion in a total budget of something like \$17 billion. It is a very large part of the budgetary estimate.

I suggest to you that in your ingenuity you can find a better way that seeking approval of the expenditures 15 months after the beginning of the pay-out period. I suggest to you that it goes contrary to the whole concept of parliamentary control and the system of Estimates, Program Planning, Budgeting (PPB), and so on, into which so much effort has been put. I suggest to you that it is going absolutely contrary to that for reasons only of administrative expediency. I understand the requirements of administrative expediency, but I do not think administrative expediency should ever have been allowed to take precedence over the concept of parliamentary control of money by vote before it is spent.

Senator Phillips: Senator Grosart has covered, probably more effectively than I am able to do, one of the points I wanted to make. The other one is based on the fact that Senator Buckwold said the taxpayer is not required to make up a certain portion of the unemployment insurance fund. At the end of each month, Mr. Minister, when I pay my nurse I must deduct unemployment insurance, I must make a contribution, I must deduct her income tax and so on. I would like to know how you make the distinction between that form of taxation and income tax. To me, it is all taxation.

Hon. Mr. Andras: I think this is a matter of opinion. It received a great deal of attention and discussion during the debates on the bill itself. I think I would agree with those who say it is not a form of taxation, that those who are paying into the plan are paying into an insurance scheme and they are entitled to the benefits of the insurance scheme. So I really believe, senator, with respect, that it is just a matter of disagreement between us as to whether "taxation" defines it or not. I know the point you are making.

Senator Carter: I would like to follow on Senator Grosart's questioning. This procedure of making advances after the fact and coming back to Parliament for approval after the payment is made, I understand is inherent in the act itself.

Hon. Mr. Andras: That is correct.

Senator Carter: The act does not leave any alternative but to do that?

Hon. Mr. Andras: That is correct.

Senator Grosart: As a supplementary—

Hon. Mr. Andras: The act would have to be amended.

The Chairman: Senator Carter.

Senator Grosart: I am questioning the answer, whether it is inherent in the act that it must be *ex post facto*.

Hon. Mr. Andras: I guess we need a definition of the words "inherent in the act." I sincerely believe it is very deeply imbedded in the act as it is now designed.

Senator Grosart: By implication.

Senator Carter: That being the case, the fact that an election intervened would not have altered the situation, except perhaps in the amount of the advances.

Hon. Mr. Andras: Yes, that is correct. Again, in a non-political sense, the timing of the election had nothing whatsoever to do with the determination of the amount required. It had nothing to do with it.

Senator Flynn: Surely, Mr. Minister, you are not accepting the statement of Senator Carter that more money was spent because there was an election?

Senator Carter: That was not my question.

The Chairman: That is not what he said, Senator Flynn.

Senator Carter: That is putting a wrong interpretation on my point.

Senator Flynn: It may be, but I am quite sure the minister does not want to accept that.

Hon. Mr. Andras: I can appreciate your deep concern over the matter of any trouble I might get into; but if there was any implication of that sort in the question, which I did not think there was, I join you in saying categorically "no"—no, no. That makes three times!

Senator Carter: Following on Senator Grosart's suggestion, the only other way you can overcome this problem is by having forecasts.

Hon. Mr. Andras: That is correct.

Senator Carter: If you are going to have forecasts, to be on the safe side you are going to request a very large amount. If you do that, are you not then creating a psychology in the nation that the government is expecting high unemployment; and you have this adverse impact on the whole economic system, that the government itself is budgeting for high unemployment?

Hon. Mr. Andras: Most certainly, one of the key factors in such a forecast would be the indication of a level of unemployment. If the amount were high, I suppose it would obviously give an expectation of high unemployment. I hasten to say that there are many other factors: there is the length of time people are going to be out of work and, therefore, claiming benefit; there is the wage rate; there are regional variations on this. Believe me, with respect to Senator Grosart, I have been searching this whole area and have been looking for better answers. I am impressed by the complications, the variations, and all the factors that would have to come into such a forecast.

Senator Carter, if I may just say this—and I think it might be useful to this discussion here—on the question, "Is it inherent or is it not inherent?" section 136 of the act clearly says that in each fiscal year, commencing

with the fiscal year 1973-74, there shall be credited to the unemployment insurance account an amount equal to the government cost of paying benefits for the immediately preceding calendar year, which amount shall be charged to the consolidated revenue fund. That is clearly the design of the financing, advances in the meantime, to cover that cost plus any shortfall in the premium account; and then it is tallied up and turned into an appropriation. It is certainly embedded in the act.

Senator Grosart: It is embedded in the act that you have advances. That is all.

Hon. Mr. Andras: It is embedded in the act that there shall be credited an amount equal to the government cost of paying the benefit, after the end of the fiscal year. That is section 136, not section 137 which covers the advances.

Senator Grosart: My point is that even if that is so, it does not affect my argument that you may be required to forecast what those amounts are likely to be, as every other department is so required. Every department is required to say, "We have to implement this act. Here is what we think it will cost. Judge us on our efficiency in forecasting."—which, in a sense, is an essential part of the assessment process of management. My point is that you are destroying the purposes, you are evading—I am not saying it is for any sinister purpose, but for administrative expediency—this very sensible requirement of the assessment of the forecasting and performance of management. We are concerned about it.

Hon. Mr. Andras: I am sorry about it.

Senator Carter: Can I continue? It is not you who are evading it. The act compels you to evade it, as I understand it.

Hon. Mr. Andras: Well, if it is in fact evasion, yes.

Senator Croll: It is not evasion; it is a course of action.

Hon. Mr. Andras: It is a course of action, yes.

Senator Carter: It is by the nature of the act and the procedure that you have to follow.

Hon. Mr. Andras: That is correct.

Senator Carter: I would like to come back to the employers. How are the employers required to make the remittances—quarterly, monthly or at the end of the tax year?

Hon. Mr. Andras: I believe it is a monthly payment in bulk for all the deductions, as the chairman of the commission was indicating. There is then a reconciliation of that amount by the tax department, when the corporate tax and personal income tax forms are filed and the T-4 slips are consolidated and analysed.

Senator Carter: Are there such things as delinquent employers?

Hon. Mr. Andras: The Department of National Revenue is totally responsible for the administration of that side

of it. I do not know whether we are knowledgeable on the delinquency of employers.

Senator Carter: That does not come under your purview?

Hon. Mr. Andras: No, it does not.

Senator Carter: Just one more point. I do not expect you to answer this now, but later on I would like you to give me something on paper about the extra payments regionally. I cannot quite visualize it on the basis of just a vague concept such as a region and an excess over 4 per cent. I should like to see how that really works out on paper, if you can give me a few regions and just what payments were made. I should like to take, for example, a place like Toronto, where the unemployment is probably lower than in the rest of the region. Assuming that the unemployment in Toronto was 3 per cent and the regional area including Toronto was a little over the national average, would the unemployed person in Toronto get the additional benefits simply because the region itself exceeded the average?

Hon. Mr. Andras: Yes, but there is, in fact, at the moment no regional benefit for Toronto, because its level of unemployment is below the average.

Senator Carter: It happens to be in a region that is below.

Hon. Mr. Andras: If there were a town, community or village within a region that was above, it is the regional characteristics that determine it.

Senator Croll: Use Ottawa instead of Toronto, and apply it.

Hon. Mr. Andras: If Ottawa is part of a larger region and the unemployment rating in that larger region makes the people within the whole region eligible for those benefits, those in Ottawa would get them too. I think probably what we are getting at is the size of the region by population. Toronto, for example, does not now enjoy those benefits.

Senator Carter: Is Toronto a separate region?

Hon. Mr. Andras: Toronto-Hamilton is a separate region, yes.

Senator Flynn: Haven't you got second thoughts about these additional benefits being paid in regions where there are more than 4 per cent unemployed? It seems to me that, first, this is welfare and, second, it would induce people to adopt an attitude where they would not try so hard to get a job if they were going to be getting benefits longer. It might induce some people in regions where they do not get the additional benefits to move into regions where they would get them. You have not any second thoughts about this scheme?

Hon. Mr. Andras: I personally do not, senator, no.

Senator Flynn: The experience is not long enough, I suppose, is it?

Hon. Mr. Andras: No, nor am I philosophically challenged by that myself. I agree with the regional scheme and the government acceptance of responsibility in this area above a certain level.

Senator Flynn: Don't you think it is close to welfare?

Hon. Mr. Andras: No, I do not.

Senator Flynn: It is close to welfare by providing additional benefits only because there are more unemployed in a given area.

Hon. Mr. Andras: No, I do not feel that that is a welfare plan.

Senator Flynn: Just leaving that point, when did you first realize that there was really a contradiction between subsection (4) of section 137 and the obligation in the act to make some payments?

Hon. Mr. Andras: When did I realize it?

Senator Flynn: Yes. The act is only two years old.

Hon. Mr. Andras: About thirty seconds after I took over the portfolio and realized that I was going to have to appear before committees like this and answer for it!

Senator Flynn: But no one in government had realized that before. Your predecessor had not realized it.

Hon. Mr. Andras: Oh, I think so, sir. This gets into the area of when did the government know that the ceiling might be bulged. I can restate the arguments we placed in evidence before other committees, if you wish. I really do honestly believe, looking back on this and having administered, as I say, the National Housing Act, where there are statutory limits to loans—

Senator Flynn: With discretionary disbursement.

Hon. Mr. Andras: Yes, you could make the loan or you could not make it because you were approaching your discretionary limit, but there is no damn way of turning off, nor would I be a party to turning off, unemployment insurance benefits payable under this act, under section 135. So the contradiction there is not capable of reconciliation, except that something has got to give; and I just do not think it is the unemployed people in this country—and I am not being a demagogue in saying that—that should have to give in this situation.

Senator Flynn: No, the act is there.

Senator Thompson: Mr. Chairman, on a more general question, thinking of Senator Grosart's question concerning methods of accountability at an earlier stage, I appreciate that there are other social insurance schemes in which premiums are paid, which are different from unemployment insurance, and I wonder if the minister would know if they have a similar sort of open-ended approach. I am thinking of medical insurance, for instance. Do they have the same problems that you have with respect to accountability?

Hon. Mr. Andras: I no not know if they forecast. I regret my lack of knowledge on that, and it is one of

the areas I want to examine. They most certainly have had, in the end effect of all this—through all the machinations of procedures and proceedings and everything else—the same difficulty of bulging the ceiling, and the cost of that has been greater than originally calculated. I suppose this is often the case. But whether anybody would turn the clock back on medicare because of that, I do not know. I, for one, would not.

Senator Thompson: This brings up the concern about the accountability to Parliament that is not only in this scheme but in many others as well.

Hon. Mr. Andras: Yes, that is right.

Senator Buckwold: Just carrying this a little further, you have all these open-ended schemes; you have arrangements, say, with the provinces, the federal government, in fact, having no control.

Hon. Mr. Andras: That is right.

Senator Buckwold: There are welfare grants, medical grants, post-secondary education grants.

Hon. Mr. Andras: There are equalization payments by formula. There is a whole series of them.

Senator Buckwold: Well, equalization perhaps is a different kind of ball game, but there are these other things over which, in fact, you have really no control. If suddenly—heaven forbid—half the population went on welfare, you would be tagged with 50 per cent of the costs of sharing it with the provinces. How are those expenditures controlled? I think that is Senator Thompson's question. You would have to pay by statutory requirement. Wouldn't the situation be basically the same?

The Chairman: I suppose that the President of the Treasury Board would perhaps be more qualified than the minister to answer that question. I do not want to say that the minister is not competent in any way, but it would be much more within the power and authority of Treasury Board to deal with those questions, I think.

Senator Grosart: I would suggest that the easier way would be to take a look at the main estimates. The answer is there very clearly. Over and over again there are instances in the same Supplementary Estimates (A) that we have been talking about where we find a request for an appropriation for unpredictable expenditures. For example, in the case of the new federal government Winter Capital Projects Fund there is a projection over 4½ years in the amount of \$350 million, and authorization is requested for \$350 million to pay out on this program that is quite uncontrollable, because it is winter works, and there is a "forgiveness" element, based on certain factors—largely on-job paylists—which will be only a small part, maybe 30 per cent. So the total cost to the federal government is completely unpredictable. But here, following the tradition of the estimates, the government comes before Parliament to say, "We anticipate this expenditure of \$350 million on this winter works program over 4½ years, and we want your authorization to commit ourselves to that."

Senator Buckwold: That does not answer the question, Mr. Chairman.

Senator Grosart: It does. It is the same with items from other departments. It is the same where you have open-ended agreements with the provinces: the department comes and says, "Here is our estimate of what this is going to cost."

Senator Buckwold: That is not the question. The question is this: When you reach the limit of the estimate and you are into an over-expenditure position, do you suddenly stop paying the welfare share?

Senator Croll: You go for supplementary estimates.

Senator Buckwold: That could be later.

Senator Croll: Mr. Chairman, in answer to Senator Flynn's question, when he asked you, I think, whether there was a fall in welfare across the country, I think you answered, Mr. Minister, that you were not aware of it.

Hon. Mr. Andras: No, I am sorry. I thought he asked if I considered the principle of paying unemployment insurance above 4 per cent or regionally to be a welfare scheme, and I said no, I did not. I certainly am aware that there is a drop in welfare, because the alternative would be that; but I do not agree that this necessarily says that the payment of unemployment insurance is a welfare proposition. I say this because people who are getting unemployment insurance have been paying into the insurance scheme which has certain features to it like any other insurance scheme. A life insurance scheme, for example, has certain features to it which can trigger a change in the premiums.

[Translation]

Senator Flynn: Would I be permitted to ask Mr. Cousineau a question? It has been stated that as from yesterday the Fund had been exhausted, is that right?

Mr. Cousineau: That is correct, yesterday we did not issue any warrants.

Senator Flynn: You did not issue any warrant yesterday, because there was not enough money left to cover the cheques?

Mr. Cousineau: That is, as far as yesterday is concerned, we tried to protect—today is the employees payday—after having provided for payday, there was not enough money left to cover the cheques.

Senator Flynn: Yesterday?

Mr. Cousineau: Yesterday. Some 124,000 people have to be paid.

Senator Flynn: Those cheques are ready, I presume?

Mr. Cousineau: I might say we have taken all procedures...

Senator Flynn: You mean precautions?

Mr. Cousineau: We have taken all necessary precautions and, if the bill had been approved yesterday evening...

Senator Flynn: You would have been able to mail the cheques this morning?

Mr. Cousineau: Sometime during the night.

Senator Flynn: If the bill gets third reading today, you will be able to mail them today?

Mr. Cousineau: This evening.

Senator Flynn: If the postal service is effective—it can be, at times—if it is more effective than on most other occasions, then the majority of those involved may not have to suffer at all because of the delay?

Mr. Cousineau: This I could certainly not guarantee.
[Text]

Senator Flynn: I would rather blame the Post Office than the Senate.

Senator Croll: If there are no further questions, Mr. Chairman, may I move that the bill be reported?

Senator Grosart: Mr. Minister, earlier I understood you to say that if it was practical to forecast expenditures and write a ceiling into the act, this would mean—and I think this was your main objection to it—that you would have to come back to Parliament every year for an amendment to the act. Is that so bad?

Hon. Mr. Andras: What I am saying is this: In order to have a ceiling that would not require to have that, it would have to be set at such a large amount as to be meaningless in the sense of the purpose of a ceiling—that is, as some control on costs.

To come back to the question of asking Parliament to amend an act each year, while that situation applies to just one act, it is not a bad principle. But knowing the fight, as many of us here do, for parliamentary time, while this is an extremely important measure and an extremely important program, there are other important programs and measures which make demands on parliamentary time. If you knowingly have an act that is going to require frequent amendment, I really do not believe that this is efficient. In a new act I do not find myself in the position of having to express shame that we have to come back to Parliament for an amendment to refine a dramatically changed program a year later in the light of experience. I think that anybody who tackles that is simply saying, "Look at this horrible error we made!"—unless, of course, you have a person who is simply not prepared to take a chance and make changes in the first place. Knowingly to have to provide for an amendment to an act frequently, by reason of the provisions of the act, my personal opinion would be that that is not a good thing. I am not saying this because it means that you do not have to answer to Parliament, because, in fact, you do in other ways. I say it simply because the fight for parliamentary time for many worthy programs is such that this would be defeating its purpose.

Senator Grosart: I have to say that I find your attitude, Mr. Minister, very, very commendable, and I hope we will not find any \$1 items in your estimates in future. Other officials in other departments are not that concerned.

Hon. Mr. Andras: Well, I hope I will have another two or three years' experience in the portfolio; and I will then be able to come back and we can debate that.

Senator Grosart: A final question, if I may, Mr. Chairman. The second part or the second clause of the bill provides in effect, as I understand it, for parliamentary approval for calling the amounts obtained by the warrants an advance rather than an appropriation, which it would be under a strict interpretation of the Financial Administration Act. Is that correct?

Hon. Mr. Andras: The purpose is to ensure that it is deemed to be an advance and, therefore, repayable to fit into the whole scheme of the act.

Senator Grosart: I think you would agree, then, that this suggests that the warrant procedure was not entirely tailored to the circumstances.

Hon. Mr. Andras: No, I would not agree. And if we are going to get into that discussion, then I would ask our legal people to take over.

Senator Grosart: No, do not misunderstand me. I am not discussing the legal aspects of it. All I am saying is this: The procedure you took under warrant made this an appropriation under the terms of the Act. Now, for your purposes, you do not want it to be an appropriation; you want it to be an advance. Is that correct? You want it to be regarded as an advance so that it can be paid back.

Hon. Mr. Andras: For the purposes of the unemployment insurance scheme we want it absolutely understood that it is required to be paid back, as are other advances.

Senator Grosart: Yes, that is correct. All I am suggesting is that this very fact would indicate the warrant procedure was not tailored exactly to your requirements, because it would be an appropriation and you did not want an appropriation.

Hon. Mr. Andras: I think the President of the Treasury Board is much better qualified to answer that question, because we simply inform Treasury Board at a certain time, which has been publicly indicated, that there is an additional amount required over and above the \$800 million. How are we going to get it? The President of the Treasury Board and the Minister of Finance advised us that it would be by way of warrant, and the special warrant was issued pursuant to section 23 of the Financial Administration Act. This warrant reads, in part, as follows:

The Treasury Board is hereby authorized to pay advances in the aggregate of \$234 million for the purposes of the Unemployment Insurance Act, 1971, to be applied by the Unemployment Insurance Commission toward the payments of benefits and costs of administration under that act, such advances to be repaid in such a manner and on such terms and conditions as the Minister of Finance may prescribe.

This is an extract from the warrant itself.

Senator Grosart: Yes, I have read that, Mr. Minister. I will not carry the argument any further, except to say that while the warrant designates this as an advance, the authority for the warrant designates it as an appropriation. I understand that.

Is Mr. Douglas here today?

Hon. Mr. Andras: Yes.

Senator Grosart: I wonder if I could ask Mr. Douglas to explain this to me, and it is not a controversial question at all. I take it to be reported correctly. It appears in the Proceedings of the Miscellaneous Estimates Committee of the other place of January 25, 1973. This was in mid-August, when this matter was under discussion. At that time you said:

I remember that I advised at that time, there were three possibilities: a private bill, an item in the estimates or a warrant as the means of appropriation.

Would you explain those three alternatives as you saw them at that time? I am not asking you to get into a political argument about the elections or anything else, but just the mechanics of the three alternatives.

Mr. J. W. Douglas, Director of Legal Services, Unemployment Insurance Commission: I discussed the legal requirements with the solicitors of the Department of Finance and Treasury Board, and also with the Associate Deputy Minister. It was realized that additional money would be required. Under section 137 of the act the Minister of Finance was authorized to advance up to the ceiling, but additional money was required above that amount. It was necessary to go to Parliament for an appropriation of money. Other moneys which are authorized under our act are statutory appropriations; they are automatic appropriations. That is why it was permissible to go to that extent. However, to go beyond that, an appropriation, or authority of Parliament to spend additional money, was required. This could be obtained in the form of a private bill, such as you see before you today, C-124; or it could have been put in the estimates and, in that event, we would have needed a dollar amount, to which you object.

The other question we had was: Was Parliament in session or would it be in session when the money was required? There was an alternative, if it happened that we ran out of money or needed extra money when Parliament was not in session. At that time it might be necessary to use Governor General's warrants. These are the three ways of obtaining money.

Senator Grosart: Yes, but it is your use of the term "private bill" that threw me.

Mr. Douglas: I am sorry; I see your distinction. It would be a public bill, a government bill.

Senator Grosart: Yes. Those are my questions.

Mr. Douglas: I should have said, "a separate bill."

Senator Buckwold: I want to ask one final question, to get the record straight; but before I do so, I would like to say to the minister that he must have made

a fine impression on the committee. I have never heard Senator Grosart so benign in his cross-examination.

Hon. Mr. Andras: I hope you do not stimulate anyone.

Senator Grosart: You had better be careful, Sid!

Hon. Mr. Andras: I say, "Quit while you are ahead!"

Senator Buckwold: There was a statement made in the Senate yesterday that the Auditor General had nothing to do with the certification of these accounts. In your testimony earlier this morning you indicated there would be a certification by the Auditor General. I wanted to get that clear for the record.

Hon. Mr. Andras: That is correct. Mr. Cousineau could enlighten us in more detail as to when that certification by the Auditor General takes place.

Mr. Cousineau: Yes, I am trying to find this.

Hon. Mr. Andras: I do not quite understand whether he refused to, or whether, in the ordinary course of events—

Senator Buckwold: I gathered this would be beyond his jurisdiction.

Hon. Mr. Andras: The question of Governor General's warrants?

Senator Buckwold: No, the certification of the unemployment insurance account by the Auditor General.

Hon. Mr. Andras: No, he is required to do this by the act.

Senator Buckwold: I wanted to get that straight for the record.

Hon. Mr. Andras: On January 17 I tabled in the other place a financial statement by the Auditor General regarding the affairs of the Unemployment Insurance Commission.

Mr. Cousineau: Section 138 of the act indicates that the Auditor General must audit the account.

The Chairman: Is this the first time that advances have been made to the fund through Governor General's warrants?

Hon. Mr. Andras: I believe not. I think there was an advance in 1964, or 1963.

Mr. Cousineau: In April, 1963 we received \$20 million, and in May, 1963 \$15 million, so the total amount received was \$35 million.

Senator Grosart: Was this under a warrant?

Mr. Cousineau: It was not by way of Governor General's warrant. That is the first time we obtained a Governor General's warrant.

Senator Grosart: Was this the first time the fund became unbalanced?

Hon. Mr. Andras: In this era you would call it "bankrupt".

Senator Grosart: No, unbalanced on an actuarial basis.

Hon. Mr. Andras: There is a difference between "unbalanced" and "bankrupt". I suppose it depends on who is running it.

Mr. Cousineau: To put it another way, in 1957 the fund was up to \$874 million, and five or six years later it became nil.

Senator Grosart: The reason I mention this is because I remember Senator Martin's figures in the House of Commons at the time, and he thought it was a dreadful situation.

Mr. Cousineau: I may say the same thing happened in 1964, when loans were also required from the government.

Senator Carter: Has any calculation been made as to how much of the higher benefits paid out is recovered in additional revenue from income tax?

Hon. Mr. Andras: Since this is under the new act, all benefits are taxable in the hands of the recipient. We have made some calculations: 8 per cent, or approximately \$159 million, of tax revenue is recovered. Our calculation shows that it was 139 million federal and \$20 million provincial—that is the Province of Quebec—

tax recovered, for a total of tax revenue from unemployment insurance benefit payments of \$159 million in 1972.

Senator Croll: We have a motion.

The Chairman: Yes, we must proceed in the usual manner. Shall clause 1 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 2 carry?

Hon. Senators: Carried.

The Chairman: Shall the title of the bill carry?

Hon. Senators: Carried.

The Chairman: Shall I report the bill without amendment?

Hon. Senators: Agreed.

Senator Grosart: If I were a member of the committee I would say, "On division," but I am not a member.

The Chairman: I thought that with all your questions this morning you were a member of the committee!

The committee adjourned.

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FIRST SESSION—TWENTY-NINTH PARLIAMENT

1973

THE SENATE OF CANADA

PROCEEDINGS OF THE

STANDING SENATE COMMITTEE ON

HEALTH, WELFARE AND SCIENCE

The Honourable MAURICE LAMONTAGNE, P.C., *Chairman*

No. 2

WEDNESDAY, APRIL 4, 1973

Complete Proceedings on Bill C-148,

“An Act to amend the War Veterans Allowance Act”

REPORT OF THE COMMITTEE

(Witnesses—See Minutes of Proceedings)

THE STANDING SENATE COMMITTEE ON
HEALTH, WELFARE AND SCIENCE

Chairman: The Honourable Maurice Lamontagne, P.C.

The Honourable Senators:

Argue	Goldenberg
Blois	Hastings
Bonnell	Inman
Bourget	Lamontagne
Cameron	McGrand
Carter	Phillips
Croll	Smith
Denis	Sullivan
Fournier (<i>de Lanaudière</i>)	Thompson
Fournier (<i>Madawaska- Restigouche</i>)	van Roggen (20)

Ex officio Members: Flynn and Martin

(Quorum 5)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate,
Thursday, March 29, 1973:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Lang, seconded by the Honourable Senator Giguere, for the second reading of the Bill C-148, intituled: "An Act to amend the War Veterans Allowance Act".

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Lang moved, seconded by the Honourable Senator Cook, that the Bill be referred to the Standing Senate Committee on Health, Welfare and Science.

The question being put on the motion, it was—
Resolved in the affirmative."

ROBERT FORTIER,
Clerk of the Senate.

Minutes of Proceedings

Wednesday, April 4, 1973.

(2)

Pursuant to adjournment and notice the Standing Senate Committee on Health, Welfare and Science met this day at 9.20 a.m.

Present: The Honourable Senators Carter (*Deputy Chairman*), Bonnell, Bourget, Cameron, Croll, Fournier (de Lanaudière), McGrand, Phillips, Smith and Thompson. (10)

Present but not of the Committee: The Honourable Senators Macdonald, Molgat, Petten, Welch and Yuzyk. (5)

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

On Motion of the Honourable Senator Bonnell, it was *Resolved* that unless and until otherwise ordered by the Committee, 800 copies in English and 300 copies in French of its day-to-day proceedings be printed.

The Committee proceeded to the consideration of Bill C-148, "An Act to amend the War Veterans Allowance Act".

The following witnesses were heard in explanation of the Bill:

From the Department of Veterans Affairs:

Mr. J. S. Hodgson, Deputy Minister;

Mr. E. J. Rider, Director General, Welfare Service.

From the War Veterans Allowance Board:

Mr. D. M. Thompson, Chairman.

On Motion of the Honourable Senator Smith, it was *Resolved* to report the said Bill without amendment.

At 11.26 a.m. the Committee adjourned to the call of the Chair.

ATTEST:

Patrick J. Savoie,
Clerk of the Committee.

Report of the Committee

Wednesday, April 4, 1973.

The Standing Senate Committee on Health, Welfare and Science to which was referred Bill C-148, intituled: "An Act to amend the War Veterans Allowance Act", has in obedience to the order of reference of March 29, 1973, examined the said Bill and now reports the same without amendment.

Respectfully submitted.

C. W. Carter,
Deputy Chairman.

The Standing Senate Committee on Health, Welfare and Science

Evidence

Ottawa, Wednesday, April 4, 1973

The Standing Senate Committee on Health, Welfare and Science, to which was referred Bill C-148, to amend the War Veterans Allowance Act, met this day at 9.20 a.m. to give consideration to the bill.

Senator Chesley W. Carter (*Deputy Chairman*) in the Chair.

The Deputy Chairman: Honourable senators, we have with us this morning: Mr. J. S. Hodgson, Deputy Minister of Veterans Affairs; Mr. D. M. Thompson, Chairman of the War Veterans Allowance Board; Mr. John Rider, Director General, Welfare Services, Department of Veterans Affairs; and Mr. J. Dehler, Member, War Veterans Allowance Board.

Mr. Hodgson, do you have an opening statement?

Mr. J. S. Hodgson, Deputy Minister, Department of Veterans Affairs: No, Mr. Chairman, I have no prepared statement. I might just mention that the bill proposes to do two things: firstly, to raise the WVA maximum rates and ceilings by the same amount as the increases proposed under the Old Age Security Act; and, secondly, to convert the long-standing means test for war veterans allowance purposes to a modified income test.

The Deputy Chairman: Mr. Thompson, do you have anything to add?

Mr. D. M. Thompson, Chairman, War Veterans Allowance Board: No, Mr. Chairman.

The Deputy Chairman: The meeting is open for questions. Senator Phillips?

Senator Phillips: I wish to follow up on my remarks in the Senate regarding the combination of the OAS and GIS. You will recall that I questioned the wisdom of combining the OAS, the GIS and the WVA. It is my understanding that when a veteran becomes 65 years of age he applies for GIS and it is automatically assumed by WVA that he receives this. Am I correct?

Mr. Thompson: When he is 64½ years old he is advised to make application, and then under the regulations, if otherwise eligible, he is deemed to be in receipt of the OAS and GIS to which he would be entitled on reaching age 65.

Senator Phillips: You say, "if otherwise eligible." What follow-up do you make in this regard? I know that you notify him, but do you follow up with the OAS and GIS to ensure that he has received these allowances?

Mr. Thompson: Yes, they do follow up. We use the term "if otherwise eligible" because there are some people who might not have the required residence, for instance, to be eligible under the Old Age Security Act. That is why we say "if otherwise eligible", but there is a check made to confirm the amount of OAS, GIS paid.

Senator Phillips: Is every case checked?

Mr. Thompson: Mr. Chairman, I could not categorically say that every case is checked. It is my understanding, however, that it is done; it is the procedure to do so.

Senator Phillips: I recently received correspondence from a branch of the Royal Canadian Legion which was endeavouring to resolve a particular case in which a veteran mistakenly reported his war veterans allowance as income, and consequently his application for OAS, GIS was rejected. I received the co-operation of the Department of National Health and Welfare, and was perhaps fortunate in turning to them rather than to the War Veterans Allowance Board in my efforts to assist in this matter. It was decided that he would receive back pay for approximately two years. Unfortunately, during the period of correspondence the veteran died. Such a procedural delay, in my opinion, places these individuals in unfortunate situations. I know that many of them received the brochure explaining the regulations, but many have great difficulty in interpreting it. This is due in some cases, perhaps, to an inborn resentment or fear of regulations.

I cannot perceive the wisdom of combining this. At the time the programs were combined I did not see a great deal of objection, but I do now. I wonder, Mr. Thompson, if you could justify or explain the thinking of the department in combining these two programs?

Mr. Thompson: I should point out that the government made the decision.

Senator Phillips: I accept your explanation that it is a governmental decision, rather than one of the Department of Veterans Affairs.

Senator Thompson: In connection with the means test, I wonder if a veteran qualifying for welfare in some provinces might do better than becoming a recipient of the war veterans allowance?

Mr. Thompson: Our act and regulations provide that moneys paid on behalf of dependent children from welfare or other sources are exempt income. Situations may exist in which a married man with children receives a supplementary payment from a welfare agency which is not regarded as income under the provisions of the War Veterans Act and Regulations. In the normal situation, a veteran is better off as a recipient of war veterans allowance than straight welfare.

Senator Thompson: You say "in the normal situation". Could you elaborate on that?

Mr. Thompson: A situation could arise in which a man might have a certain level of income which would leave a small margin of war veterans allowance payable. The veteran might have a very sick wife needing a great deal of medication, which would be provided under welfare. The veteran's medication would be provided under the treatment regulations for war veterans allowance recipients. There is no specific provision in the act for medication for the wife. A situation can arise, therefore, in which the war veterans allowance is relatively small due to other factors and, because of this cost of medication, he could be better off on welfare. Such cases are rare, but from time to time I have come across them in the files.

Senator Thompson: The fact that a man may do almost as well on welfare does not speak very well for the war veterans allowance. It raises the question of whether the means test is too rigid. As I understand it, the war veterans allowance was introduced to some extent as an acknowledgement of an individual's duty and service performed for his country. The fact that a person might do almost as well on welfare does not indicate to me that it is a great privilege to receive the allowance. Am I fair in saying that there is a very marginal difference between welfare payments in certain provinces and the war veterans allowance?

Mr. Thompson: This varies from province to province, and there are different situations in certain combinations of circumstances. In the normal course of events the veteran or veteran and wife will be better off financially as recipients of war veterans allowance than other forms of assistance.

Senator Phillips: I referred in my remarks in the Senate to the subject matter of Senator Thompson's question, observing that it is almost impossible to make a comparison. Has the board made a comparison between welfare payments and the war veterans allowance? As I pointed out, welfare recipients may receive emergency allowances for the payment of rent, the purchase of clothing for their family and just about anything, including dental treatment. On the other hand, recipients of war veterans allowance receive a fixed amount per month. At one time the benefit of medical treatment was available. Can you make a comparison in respect to various provinces? I know it varies from province to province, as you said, but has the board ever made such a comparison?

Mr. Thompson: Not directly in that respect, because another aspect enters this picture, which Mr. Rider is better able to speak to in detail. There is an assistance fund, and there are certain other

funds, such as the army benevolent fund, to which welfare services may refer applicants. This is not a direct function of the board, but of the welfare services.

Senator Phillips: Would you elaborate on the operation of your welfare services? It is my understanding, Mr. Thompson, that the investigation takes a considerable amount of time. The non-veteran welfare recipient can telephone his welfare worker on a telephone paid for by welfare funds and receive almost immediate attention. I understand it takes anywhere from six months to one year for your welfare applications to be processed.

Mr. Thompson: The welfare services are not a direct function of the board; therefore, I am not in a position to answer.

The Deputy Chairman: Mr. Rider, would you care to elaborate on this?

Mr. E. J. Rider, Director General, Welfare Services, Department of Veterans Affairs: Mr. Chairman, I do not have with me a comparison of benefits available from provincial social welfare agencies as opposed to those under the war veterans allowance. However, the assistance fund is available for those veterans in receipt of war veterans allowance whose income is lower than the ceiling stipulated in the War Veterans Allowance Act. The individual must, of course, be a recipient of the allowance residing in Canada. The determination of the supplementation is made through a budget deficit system and can be in the form of a lump-sum payment or monthly payments. Many of the lump sums are from benevolent and trust funds. As you are aware, each of the three forces the army, navy and air force has a benevolent fund, and we work very closely with those funds. If welfare officers of the welfare services, when travelling through their own territories, find a case where this would apply, they help the veteran to make an application; they make a report; and they recommend to the benevolent fund the action which they feel should be taken.

The time lag in the provision of welfare services is not quite six months to a year. Our normal backlog is 30 days. In other words, the cases that we have coming in are normally dealt with in 30 days. There are variations. For example, a welfare officer working his territory may have three different travel routes, and he cannot be in all places every week or every two weeks. But our case load normally is a backlog of 30 days.

Senator Phillips: May I ask what financing you have under your welfare fund? You mentioned the benevolent fund. I am familiar with that. Of course, I do not have to point out that it is not really federal money. What financing, other than the benevolent fund, do you have access to?

Mr. Rider: The assistance fund is approximately \$9 million a year. If you want some figures, I can gladly get them for you.

Senator Phillips: I would be most interested in them.

The Deputy Chairman: For the purposes of the record, can you tell us what legislation governs the assistance fund?

Mr. Rider: Yes. The assistance fund is paid under the authority of a regulation, an order in council which was originally passed in August, 1952. It is known as the Assistance Fund (War Veterans Allowance and Civilian War Allowances).

Senator Bonnell: A regulation under which act? Is it a regulation under this act?

Mr. Rider: No. It is a regulation that was passed under an appropriation act.

Senator Bonnell: So it has nothing to do with this bill?

Mr. Rider: No; it has a separate function. The regulation primarily establishes a committee which is responsible for the policies of the fund and makes certain stipulations.

As I mentioned, the individual must be a recipient, must be a resident of Canada; he must have income less than that permitted under the War Veterans Allowance Act, and there must be a demonstration of need. The money can be paid either as a monthly payment for continuing maintenance or as a single payment to meet emergencies.

At the present time there are 24,880 war veterans allowance recipients—when I say that, I include civilian war allowances—who have an income less than the ceiling. Of that 24,880, 75 per cent are in receipt of assistance from the assistance fund.

This varies in percentage from area to area. For example, in the Saskatoon district only 48 per cent apparently need this help; in Newfoundland it is 83 per cent; and in Montreal it is 85 per cent. So it varies across the country. Normally, usage is heaviest in the east—in Quebec and the Atlantic provinces.

The anticipated expenditures for 1972-73 will be \$9,100,000, and an amount of \$9,647,000 has been placed in the estimates for 1973-74. The average annual payment on the single grant basis is \$150, and the average monthly continuing payment on an annual basis is \$390.

Senator Phillips: You said the \$390 was on a monthly basis?

Mr. Rider: That is right, sir.

Senator Phillips: That is more than the war veterans allowance.

Mr. Rider: Oh yes. This is a supplement to the war veterans allowance. A number of people who receive assistance have the war veterans allowance. They may have some other income, a small pension, but there is still room for payment of war veterans allowance because they have not as yet reached their ceiling and they can show that they need more than a combination of the war veterans allowance and other income.

The Deputy Chairman: Mr. Rider, I think Senator Phillips thought that the \$390 was per month; but it is \$390 per year.

Senator Phillips: That is what I thought he said.

Mr. Rider: I said the payment was made on a monthly basis. The average is \$390. It will vary. We have people who receive assistance from the fund for the full difference between the WVAB rate and the ceiling that is, \$40 for a single man and \$70 for a married man. We have others who have other income and perhaps need the difference between that other income and the WVAB, which might be \$10 a month. If they show that there is need for that \$10 a month, they get it or whatever is shown. This is done on the budget deficit basis.

The expenditures have increased quite consistently. For example, in 1962-63 the figure was \$3,180,000; by 1965-66 it was \$5,700,000; and, as I mentioned, for this year it will be \$9,600,000.

Senator Phillips: Could you speak a little louder, please?

Mr. Rider: Expenditures have increased over the years to the point where between 1962-63 and 1973 they have trebled from \$3 million to over \$9 million.

In the determination of budget deficits, children are taken into consideration. They are not taken into consideration under the War Veterans Allowance Act. We have found that there are, in assistance fund families, more than 17,000 children. These vary in number according to age and the area in which they live. For example, while we have assistance fund families with two children some 1,583 families with 3,166 children—there are 22 families in which there are 10 children.—The determination of the amount paid includes the cost, particularly, of food for the children. Under the War Veterans Allowance Act, the allowance for children is exempt income; it is not considered as income. In this determination we must take the total income of the family, because we are dealing with the total need.

Senator Cameron: You say that the assistance is only paid in Canada. Are there any exceptions to that? I am thinking of a veteran in receipt of assistance who goes to the United States or to the Caribbean, or somewhere, for two or three months. Would the payments be continued under those circumstances?

Mr. Rider: No, senator, they would not. It is necessary to suspend those payments should the recipient go outside of Canada.

Senator Bonnell: If he notifies you. What happens if he does not notify you?

Mr. Rider: Then, senator, we cannot stop it. On the other hand, if we find out about it later, we have to make the appropriate adjustment.

Senator Smith: Is there not some minimum period that a man entitled to war veterans allowance can be absent from the country? Is there not some minimum period which you would not consider as an interruption of his residency?

Mr. Rider: Not really, senator. We pay the assistance payment for the month in which he leaves the country and also for the month in which he comes back. He is not eligible for payments for the period in between.

Senator Smith: But that means he can go for about a month, anyway.

Mr. Rider: Yes.

Senator Bonnell: He can go for two months less two days.

Mr. Rider: That is right. In other words, he can go on a visit.

Senator Smith: So he can go and visit Aunt Sarah down in California without any interruption in his payments.

Mr. Rider: Yes.

Senator Fournier (De Lanaudière): I should like to know how many Canadian veterans there are today, and how many are receiving benefits by way of pensions or allowances of any kind?

The Deputy Chairman: Do you mean under the War Veterans Allowance Act, Senator Fournier, or under the Pensions Act, or under all of the acts?

Senator Fournier (De Lanaudière): My question is a general one relating to the number of veterans covered by all of the acts.

Mr. Hodgson: There are in Canada today just under 900,000 veterans, many of whom, of course, have dependants. Of the 900,000 veterans, approximately one-quarter are receiving benefits under the Veterans Affairs portfolio in any year. They are not always the same people, but roughly one-quarter of the veterans in Canada are receiving benefits of one kind or another, be it a disability pension, war veterans allowance, payments under the assistance fund, treatment in our hospitals, or settlement under the Veterans' Land Act.

Senator Fournier (De Lanaudière): So, in round figures, that is about 225,000.

Mr. Hodgson: Yes, approximately.

The Deputy Chairman: Along those same lines, Mr. Hodgson, could you give us a breakdown of the recipients of war veterans allowance relating to World War I and those relating to World War II, and also the number who are receiving disability pensions?

Mr. Thompson: The total number of recipients under the War Veterans Allowance Act, at last count, is 78,750. The figures I am about to give you, Mr. Chairman, will add up to a slightly larger total than that, because I do not have the most recent breakdown. As at the end of December last year the figures were as follows: Northwest Field Force, 7; South African War, 269; World War I, 35,502; a combination of World War II and special force—this relates to Korean service—39,095; dual service—service in World War I and World War II in Canada only—1,122; civilian war allowances, 3,501. That total comes to 79,496, which, as I mentioned, is slightly larger than the figure of 78,750. It is scaled down slightly.

The Deputy Chairman: I did not quite understand the World War I—World War II figure.

Senator Phillips: I think Senator Carter wants the same figure that I am interested in. I should like to know the number of World War I veterans and the number of World War II veterans who are receiving war veterans allowances.

Mr. Thompson: The figure for World War I is 35,502, and for World War II, 39,095.

The Deputy Chairman: Could you also tell us how many of the 78,750 would also be in receipt of a disability pension under the Pensions Act?

Mr. Thompson: That figure, Mr. Chairman, is 9,532, and that includes 14 who are receiving a disability pension under the Civilian War Pensions and Allowances Act.

The Deputy Chairman: That is approximately 9,000 out of 78,750?

Mr. Thompson: That is correct, Mr. Chairman.

Senator Phillips: Mr. Chairman, I understood one of the witnesses to state that there are 24,880 receiving assistance from this rather vague and deficit fund. Are those all veterans, or does that number include families? I want to make a comparison between the roughly 25,000 figure quoted by the witness and the total number of recipients, which is roughly 79,000.

Mr. Rider: The figure of 24,880 was mentioned in relation to the number of recipients who would be entitled to the assistance fund. In other words, their income is less than the ceiling allowed under the War Veterans Allowance Act.

Senator Phillips: And you are quoting veterans on the same basis as did Mr. Thompson?

Mr. Rider: No, senator. This figure could include widows; the widow, too, is eligible for the assistance fund. Out of that 24,880, 18,600 are actually in receipt of benefits from the assistance fund, or 75 per cent, as I mentioned earlier.

Senator Phillips: In order to make my comparison, then, I should like the figures relating to the number of widows or other dependants; in other words, the total number of veterans, widows or dependants under the administration of the War Veterans Allowance Board.

The Deputy Chairman: Are you talking about the war veterans allowance or the assistance fund?

Senator Phillips: I want to make a comparison between the assistance fund and the war veterans allowance. In other words, I want to find out what percentage of recipients of the war veterans allowance receive this assistance. I am leading up to your comment, Mr. Chairman, if it is of any benefit to you, when you said that they were still below the poverty line. I am attempting to prove you right.

Mr. Thompson: The breakdown, as I understand the information Senator Phillips wants, in this. The information I gave you dealt with accounts arising out of service. I believe this is the information you wish to have. The veterans, apart from widows and orphans, in receipt of war veterans allowance total 43,119; under civilian war allowances the civilians number 2,509. I have the other figures for widows and orphans.

The Deputy Chairman: Would you put them on the record?

Senator Phillips: I would like to have the total figure compared with the figure given by Mr. Rider. I would like a comparison between the figure of roughly 25,000 given by Mr. Rider and a similar figure under the war veterans allowance. This includes recipients, widows and children.

Mr. Thompson: I think the corresponding figure would be the one I gave you earlier, 78,750. That is the overall caseload, the number of accounts. 43,119 would be veterans; the balance would be widows and orphans. Is that the information you want?

Senator Phillips: Yes. Then roughly one out of three recipients, 25,000 out of 78,000, require further assistance from the special welfare fund?

Mr. Hodgson: I think there is some misunderstanding here. The number receiving assistance from the assistance fund is not 25,000 but only 18,600.

The Deputy Chairman: It is 75 per cent of 24,880.

Senator Bonnell: There are 24,000 eligible and 18,600 actually receive it.

Mr. Hodgson: 24,000 would be eligible if they could prove need, but 18,600 are actually receiving it, and it is that figure of 18,600 that could be compared with the 78,000 figure that Mr. Thompson gave.

Senator Phillips: This is what I wanted to get as the actual figures for comparison. It is 18,000 as opposed to 78,750. I thank Mr. Hodgson for his explanation.

This raises a further question in my mind. I am intrigued by the fact that over 8,000 people who would be eligible are not receiving assistance. Can you tell me why they are not receiving assistance if they are eligible?

Mr. Hodgson: The 25,000 are those whose total income is less than the ceiling under the War Veterans Allowance Act. Some of these people can and do prove need, and therefore receive payments under the assistance fund regulations. Some are unable to prove need, and some, no doubt, do not attempt to prove need. These two explanations would account for the difference between the 18,600 and the 25,000.

Senator Phillips: I am not entirely satisfied with your answer. There are 7,000 people who you say could, if they attempted to,

prove need. What direction and assistance do they get from the department?

Mr. Hodgson: Some of the 7,000 might be single veterans who have either a low or only a nominal rent and are therefore able to manage, without too much difficulty, without supplementation. Others might have more stringent budgetary circumstances, or might, as Mr. Rider said, have a number of dependants, so that their situation would be much more severe, and they would then qualify.

Senator Thompson: How do the 7,000 or 8,000 who are eligible prove need? What steps are taken to prove need?

Mr. Rider: Their need is based on the requirements for receipt of the allowance. The order in council states that the allowance may be paid on a monthly basis where it can be established that the recipient's income is insufficient to meet the basic monthly costs of shelter, fuel, food, clothing, personal care, and any specific health needs.

Senator Thompson: Suppose a man is living on a sub-subsistence farm. You are reading out the requirements, but how does that man go about getting it? Does he hire a lawyer? What does he do to make an application? Does someone go out to him from your organization? There are 7,000 or 8,000 in need. How do you reach out to give them a hand so that they can fill out an application?

Mr. Rider: These people are seen by welfare officers. They are very often first of all seen when an application for war veterans allowance is taken.

Senator Thompson: Could I just interrupt? Who are the welfare officers? Are they provincial?

Mr. Rider: The welfare officers are the staff of the Welfare Services Branch.

Senator Thompson: Of what? Of your organization?

Mr. Rider: Of the Department of Veterans Affairs.

Senator Thompson: How many are there?

Mr. Rider: There are 200 who are operating as contact people with veterans. They work out of the district offices, of which there are 18 across the country, along with three sub-offices. The bulk of them work in defined geographic areas.

Senator Thompson: I am sorry to interrupt you again, but have the 200 welfare officers seen those 7,000 or 8,000 people?

Mr. Rider: Yes, sir.

Senator Thompson: They have all been interviewed by a welfare officer?

Mr. Rider: Yes, sir. They are all interviewed when an application is taken for war veterans allowance; and if at that time it is apparent

to the welfare officer they also need the assistance fund, he will check into these costs, and will then take an application for the assistance fund at the same time. These people are also seen occasionally when visited on what we call a review, which is a review to determine whether or not that individual should continue to receive war veterans allowance at the rate he is getting it, or maybe at a higher rate or at a lower rate, depending upon his circumstances. At that time they always look to see whether there is a need for the assistance fund.

Senator Bonnell: When you talk about need, do you mean real need or a set need? In other words, in some areas a man might live in an old house which is not insulated, so that the fuel cost is high. Do you have a set rate for fuel, or do you actually pay a man's bill?

Mr. Rider: No, sir. The cost of shelter—which includes things like rent, taxes, fire insurance, utilities, heat—is allowed at whatever it costs the veteran, whatever he actually pays for it.

Senator Bonnell: Does he have to show receipts for the payments?

Mr. Rider: Yes, he has to show receipts; he has to show the welfare officer that this is the case. Very often it is his word, that it costs him about \$200 or \$250 a year to heat his home. He does not ask to see the receipted bill for the fuel which has been purchased. There are also items like food and a number of small items added together. The cost of food is calculated at the cost to him in the area in which the individual lives, based upon surveys. We escalate these according to the consumer price index. Another item that is allowed is telephone, for example, as we consider this a basic need for these people. They are generally older people and therefore the formula takes into consideration the basic cost of the telephone. It does not provide for long distance calls, but for what it costs that veteran to have a telephone. That is allowed.

Senator Thompson: Are your terms more generous than those in any province in Canada, in connection with these welfare payments?

Mr. Rider: They are more generous than some provinces and perhaps less generous than others. Our formula is basically established on the excellent periodic reports put out by the Toronto Family Planning Bureau. One came out in 1973, which analyzed the cost of living for families. Most of the items are about the same; some of them are a little higher. In the case of some we allow more than that plan does; in the case of others we allow a little less; but in total they are comparable. It is considered that for a general breakdown this is a basis upon which we can work.

The Deputy Chairman: Could you put that formula on the record, or could you tell us what the current formula is?

Mr. Rider: It is the items I mentioned—shelter, fuel, and so on.

The Deputy Chairman: But you must have amounts attached to that?

Mr. Rider: No, sir. The amounts are basically according to the costs—for example, those items relating to shelter.

The Deputy Chairman: I thought you said it was based on a survey made by the Toronto Family Planning Bureau. Did I misunderstand you?

Mr. Rider: I do not have that here, sir. That is quite a book.

The Deputy Chairman: I was wondering how a formula based on a Toronto survey would apply, say, in Newfoundland.

Mr. Rider: In this case the food is based on a costing of items in Newfoundland.

The Deputy Chairman: Not on Toronto?

Mr. Rider: Not on Toronto. The types of items included follow the Toronto system. These items mentioned for Newfoundland were costed in Newfoundland, and they are adjusted according to the consumer price index annually.

Senator Fournier (De Lanaudière): Those 200 people visiting the veterans, are they what we may call qualified social workers?

Mr. Rider: No, sir. They are not qualified social workers; they are what we call welfare officers. They are not trained professionals, but they are fully capable of taking applications for benefits; they are trained in counselling; they are trained in the resources which are available, and they use all the resources available in the community. For example, if a welfare officer finds a case where there is a problem of family relations, he will determine the problem and, if there is an agency in that area which deals with family relations, he will refer the case to the agency. In other words, we do not try to duplicate the work of the agencies present in any area. He will counsel people about benefits which may be available to them through benevolent funds, trust funds, and so on. He will help them to establish a system of budgeting, for example, if one of their needs is to budget their money better. He is really an all-round welfare officer. His main job—as a matter of fact, he considers it really his primary job—is to assist the veteran.

Senator Petten: Would you say you have sufficient numbers of welfare officers, as you call them, to service this properly? What is the ratio between the officer and the veteran? How many people would he be looking after?

Mr. Rider: I think we have adequate numbers. One can always find a reason for wanting more people, but I think the numbers at the present time are adequate. The ratio of cases to a welfare officer varies quite greatly. For example, in a city area he can get to people very easily. The welfare officer who travels in a small district close to the district office can deal with more cases. The man who goes from Quebec City to the Gaspé Peninsula spends more time in travel and, therefore, he does not handle as many cases as the man who works in an area close to Quebec City. The boundaries of these areas are set and adjusted according to the numbers of cases and the other factors, like travel with which the welfare officer is involved. I cannot give you a figure, because it varies.

Senator Petten: I realize that you cannot give me a figure.

Senator Fournier (De Lanaudière): According to the figures you gave us a few minutes ago, 225,000 people receive benefits from the government. You have 200 visitors. That makes an average of 1,125 to each. Do you think this is sufficient?

Mr. Rider: I am sorry, sir, I must say that this statistical conclusion is not quite correct. That number includes many people under the Veterans Land Act, and they have their own staff. It also includes people in our hospitals and there are treatment services staff in the hospitals. If there is a welfare case in the hospital that needs the help of a welfare officer, there is either a welfare officer in the hospital or one on call in a district office who can go to work on that case.

Mr. Hodgson: The total staff in the Veterans Affairs portfolio—that is to say, including the department and the associated agencies—is just under 10,000, and all of them, of course, are trying to serve the client, the veteran.

Senator Phillips: Senator Petten and Senator Fournier have taken certain of my questions. I am disturbed by the ratio of the workers you have within the DVA, as opposed to the number of welfare recipients covered by a social worker within the Department of Welfare. I believe the more prosperous provinces attempt to have one worker for 40 families. Here you are completely out of line and, as much as I respect Dr. Hodgson, I do not accept his statement that there is someone available if a veteran goes into a hospital. I believe you said earlier that something like 80 per cent of the veterans in Newfoundland needed special assistance above and beyond war veterans allowance. Newfoundland has its transportation difficulties, as have a great many areas of the Atlantic provinces. How many veterans are there receiving welfare assistance in Newfoundland, and how many workers do you have to cover that territory?

Mr. Rider: There are nine welfare officers in Newfoundland, sir.

Senator Phillips: Yes?

Mr. Rider: Actually, the number receiving the assistance fund—is that what you mean?

Senator Phillips: No, I mean those receiving war veterans allowance.

Mr. Rider: Those receiving war veterans allowance number 4,088.

Senator Phillips: So 4,088 veterans are covered by nine welfare officers.

Mr. Hodgson: It will be appreciated that the 4,000 people are receiving war veterans allowance, and from month to month what they are looking for is a cheque, not a welfare officer. It is only the cases which are applications, really, or the cases being rechecked which may require the presence of a welfare officer.

Senator Phillips: That's very fine, Dr. Hodgson, but you are able to reduce the figure from 25,000 to 18,000. You must have some basis for doing that. You must be visiting these people or having contact with them, if you can reduce the figure from 25,000 to 18,000. You are leaving nine welfare workers in Newfoundland to look after 4,000 people.

Mr. Hodgson: The only point I was making was that a person who is already a recipient of war veterans allowance is normally one who has been dealt with. The nine welfare officers are dealing with people who are active applicants, and they are finding, as Mr. Rider said earlier, that they are able to handle cases, as a broad, general rule, within a 30-day period; and then, when they have dealt with them and obtained approval for war veterans allowance, there is no longer an active requirement.

Senator Phillips: I do not follow your explanation that once they have been granted war veterans allowance there is no further need of contact. If you have roughly 25,000 people out of a total number of recipients of 78,000, there must be the need of follow-up. That is one out of three. You can state that there is no need of any further follow-up once they are given their cheques, but I find that, if you will pardon me, a damn callous attitude and one I am very surprised at. You should have—you *must* have a follow-up on these people.

Mr. Hodgson: Perhaps I have again created a misunderstanding by my manner of expression. If so, I must say I regret it. The veterans' welfare officers are dedicated, as are the officials of the department generally, to the clients they serve. If a veteran has made an application for war veterans allowance or for assistance funds, he is dealt with as quickly as possible and in a most sympathetic and not callous manner. If afterwards there is some further requirement, the welfare officer, of course, is happy to call in again the next time he goes into that area to deal with that further requirement. The requirement might be simply a matter, as Mr. Rider was saying, of letting this veteran know—because after all the veteran is also a citizen—that he has other rights than those provided by the department. In other words, it can be a reference and information and counselling service. This is frequently done.

The only point that I was trying to make, really, was that comparing nine welfare officers with the number of 4,000 veterans on war veterans allowance could lead to a misleading conclusion that the 4,000 are the number of pending and active cases, which is not the situation.

Senator Bonnell: Mr. Chairman, perhaps we should get back to the War Veterans Allowance Act which is before us. We have had a good dissertation, I would think, with respect to assistance. Perhaps after we get this thing looked after, we should invite the department officials back to give us some information on how all the other acts in the department operate.

Perhaps then Senator Phillips, with his questioning, would be able to pull out the proper answers so that we can all become enlightened. But I think we have a very important bill here, and we had better get back to it.

These are the things that are important, and I realize that we are probably not familiar with all the things available to our veterans, and we should be. A good session here afterwards might be worthwhile. But first I should like to know whether there is anything in this bill that is going to remove the handicap of owning assets for people to qualify for war veterans allowance? Is this handicap of so many assets going to disqualify veterans, or has that been raised, lifted or changed in any way?

Mr. Thompson: This bill, in addition to increasing the rates and ceilings, will remove the limitations which now exist on assets which at the present time are restricted to \$1,250, single, and \$2,500, married. This bill proposes to remove completely the ceilings on personal property.

Senator Bonnell: Which section of the bill does that?

The Chairman: Clause 2 of the bill, which repeals section 8.

Mr. Thompson: Clause 2 of the bill repeals section 8 of the act, and section 8 of the act is the one which contains the personal property limitations.

Senator Bonnell: So, no longer will there be any restrictions on personal property assets to qualify for war veterans allowance, is that correct?

Mr. Thompson: That is correct.

Senator Bonnell: According to section 8, which is repealed by this bill?

Mr. Thompson: Correct.

The Deputy Chairman: Does that include the value of the home, the value of the car, and that sort of thing? Is that taken into consideration?

Mr. Thompson: That is right, Mr. Chairman, because cars and these sorts of things are all considered personal property. The value of the home is dealt with under another section of the act which says, in effect, that no assessment may be made on the value of a home up to \$10,000. The regulation that did exist, that put an assessment on the amount above \$10,000, was rescinded a few months ago, so that the act says that there shall be no assessment up to \$10,000, and the regulation that assessed it above \$10,000 has been removed, so that now there is no assessment on the value of the home.

Senator Bonnell: In the past, under the present legislation, many war veterans had to have a 5 per cent disability in order to qualify for war veterans allowance if they were not overseas. Has that been changed?

Mr. Thompson: There is what is known as a final payment under the Pension Act. A man may have been assessed at, let us say, 2 per cent, and they give him a final payment. That final payment is considered by the board to meet the requirements of the act. So,

there has been a change to that extent, but it is strictly a question of interpretation of the act; but the man must have had at least a final payment or service in a theatre of actual war.

Senator Bonnell: For a 5 per cent disability?

Mr. Thompson: Well, if he was assessed at 1 or 2 per cent and they gave him a cash payment, then that would be accepted as coming within the definition of being in receipt of a pension, so he would be eligible.

Senator Bonnell: Now under the War Veterans Allowance Act, as I understand it, if you are not a disability pensioner, you have to be either 60 years of age or disabled, unable to support yourself and your family, but when you are 60, as a man, you don't need the requirement of being unable to support yourself or your family, is that correct?

Mr. Thompson: That is correct.

Senator Bonnell: Provided that you qualify on other grounds—for example, that you are overseas?

Mr. Thompson: That is correct. And it is 55 in the case of a female veteran or a widow.

Senator Bonnell: Now under the term "unable to support yourself and your family", what are the criteria? How disabled do you have to be? Under the old Canada Disabled Act, administered by the Department of Welfare, you had to have one foot in the box and the other on a banana peel. Now, under the War Veterans Allowance Act I understand it is not quite that stringent. What is the requirement under the War Veterans Allowance Act for disability?

Mr. Thompson: Well, the act sets it forth in section 3. After dealing with age 60 or 55 it says:

(c) any veteran or widow who, in the opinion of the District Authority,

(i) is permanently unemployable because of physical or mental disability . . .

That means a question of medical assessment of unemployability, but a very important clause in that section says:

or

(ii) is, because of physical or mental disability or insufficiency combined with economic handicaps, incapable and unlikely to become capable of maintaining himself or herself . . .

You have there a combination of factors. A man may have a grade 6 or even a grade 5 education and he may have arthritis. If he were a college graduate, the arthritis might not be a factor; if he even had high school education or even a certain trade or skill, it might not be a factor; but because he is doing labouring work all his life, these things combined enable the board, in their discretion, to add these

all up and, considering where the man lives and the opportunities for employment within his capabilities, if in their opinion he meets the requirements, then he is ruled as eligible.

Senator Bonnell: So then education is a handicap to a war veteran?

Mr. Thompson: Perhaps I did not make it clear, but what I meant was that education can be an economic factor. The level of education a person is able to achieve can definitely have an influence on his ability to obtain employment.

Senator Bonnell: What about the ceiling in this war veterans allowance case? Has the ceiling been raised under this act? And here I am speaking of the amount that they are allowed to make.

Mr. Thompson: The ceiling has been raised to the same amount of dollars as the rate. The new ceiling, single, will be \$191.14 and married will be \$327.21. That retains the same difference between the rate and ceiling which existed before, where there was a \$40 difference in the rate and ceiling for a single man and \$70 between the rate and the ceiling for the married man.

Senator Bonnell: What do you mean in this bill by the "annual adjustment"? Without having the previous bill before us to see what the amendments mean—and there is no explanation in this bill as to what this means—I was wondering what was intended by this. It says it "is a rate equal to the product obtained by multiplying". But by multiplying what?

Mr. Thompson: Well, previously section 19(1) of the War Veterans Allowance Act, which was put in last year, was to provide for an automatic escalation on January 1 each year to reflect the consumer price index as at the end of September the previous year. That was to begin on January 1, 1972. What this amendment does is to update that and say that this escalation will reflect the increase based on the new rate being set, so that the increase that is included in the bill will be reflected in the base on which the calculation is made next year and succeeding years. If this had not been done, they would be tied to an escalation clause that was based on last year's base figure. So all that this does is incorporate the proposed increases into the base figure.

Senator Bonnell: How do you calculate a year for the purposes of war veterans allowances? Is it from October 31, December 31, March 31, or what? When is the end of your year in connection with income earned by veterans? If a veteran should earn too much money, for example, this year, when would his next year start so he could get into a new pension allowance?

Mr. Thompson: Let us suppose the date of his award is the 15th of the month, then his first war veterans allowance year will actually be a year plus 15 days. This then gets him on to a 12-month-year basis and from then on the end of his war veterans allowance year is each succeeding 12 months.

Senator Bonnell: So, every war veteran has a different year. In other words, yours is not a definite departmental end-of-year term whereby from then on you start a new income year?

Mr. Thompson: That is correct. Theoretically everybody could be different.

Senator Smith: Mr. Chairman, I hesitate to bring this matter up because I thought we were going to deal only with the War Veterans Allowance Act, but we have strayed somewhat from dealing with it.

In the first place, I want to say I think that the War Veterans Allowance Act should be relied on in more of a primary way than it is today when dealing with very difficult disability cases. I have several examples in mind, but I do not wish to spend a great deal of time on them.

I have discovered, to my shock and amazement, that a veteran with valiant service had lost his job with a law firm out in Calgary because he had a mental illness. His friends in Calgary spent so much time in trying to get him a disability pension that he had to come back home to a rural area in Nova Scotia and, you might say, live off his widowed mother. This was no way to treat this man's depression. It was by accident I heard of it. But within a very, very short time he was drawing his own war veterans allowance and it had a phenomenal effect on his recovery. He is back in Calgary now. He has regained his pride. He had felt guilty because he was imposing on his mother. Perhaps people were misguided in spending too much time in trying to get this man a disability pension, when the first thing that would come to my mind was that the man surely could get the war veterans allowance, which he did.

Another case I have in mind is a common one but is the most disturbing one I have ever heard of. It concerns a young man I have known all my life who had served in the second world war and who has been unable to work since January, 1972. That makes it a year and a quarter now. His friends—whether they are friends from the Legion or his supervisors, I don't know—spent all this time trying to get this fellow an increase in his present 20 per cent disability—10 per cent in each leg. But the trouble is not with his legs at all; he has a very crippling osteoarthritis. I saw him in the local hospital a year ago January. He has been in and out of hospital in Camp Hill ever since. They are still fighting his disability case. I doubt if he is ever going to receive more than the 20 per cent.

The point I am coming to is that it has taken two months to get the documentation from Ottawa down to the Camp Hill Hospital. It was around February 22 when they asked for the documentation, which has not yet arrived at the pensions advocate's office in Halifax. I was told that the other day. This is a bad situation for a man with three or four teenage children who are going to school and who has been without income since January, 1972. He is a man who has worked every day of his life since he came back from overseas. He was with the fisheries department at first and then he got a better job. How he is lying there worrying about his family, and all because this is the easiest access to adequate income until it is finally decided whether this is a war-related injury, or until the osteoarthritis people find a miraculous cure. He is in debt and is in a hell of a state. Surely, there is some easier way of dealing with these individual cases? This shows up a fault, not in the administration—I admire the administration—but in their attitudes in trying to solve a bad problem.

This man had too much pride to come to me or to go to anybody else. It was his local pastor who brought his case to my

attention a short time ago. I was horrified to discover that the man still was not able to get any assistance. He is going to lose his house unless something is done. This is the kind of case it is. They have been waiting two months for documentation, and when they get it I doubt that he will receive more than the 20 per cent he is now getting. Surely, with this 20 per cent and what is available to him under the welfare services, plus the war veterans allowance, this fellow will be able to pay his bills? What can I do as someone who endeavours to help people in these matters? Can I do what the Deputy Minister did this morning and use this as an example of the odd case which arises in an endeavour to get quick results in this particular case?

Mr. Hodgson: I must say I am glad that cases of this kind are, in our experience, very rare. They are most unfortunate cases where, quite clearly, something appears to have slipped.

In so far as the delay in the pension application is concerned, I should mention that the Canadian Pension Commission and the Bureau of Pensions Advocates are both facing unprecedented peak loads at the moment, so some degree of delay is inevitable. But, as Mr. Thompson pointed out earlier, there are a number of veterans who are in receipt of both a pension and a war veterans allowance. If the pensions advocate, in dealing with a pension application by a veteran, notes that the veteran is also in stringent economic circumstances, naturally it would be part of his normal course to refer that veteran to the welfare officer, who is probably in the same building, in order to determine whether an application for a war veterans allowance should also be submitted. Certainly, this would be the normal course.

Senator Smith: I judge this only on my contact with the department at various levels, including the pensions advocate in Halifax, Mr. MacFarlane, who tells me that it has been two months since he asked for the documentation. Neither Mr. MacFarlane nor anyone else has suggested that perhaps this man will be eligible for a war veterans allowance and that they will explore the matter. It was only when I found this on my desk on my return to the office this week that I found that no consideration has been given to the urgency of this matter. He is lying there with a bad neck and back, and he is going to be a hopeless cripple. And we make him wait for a year or so for some hope in life. He will commit suicide some day.

Mr. Hodgson: Dealing with the pension application side of the matter, every effort is being made to expedite all of them, but it is the great number of applications that is causing the delay.

However, I will undertake to suggest to the chairman of the Bureau of Pensions Advocates that he remind his people of the duties of the pensions advocates to refer people in appropriate cases to the welfare officer so their eligibility of WVA might also be considered.

Senator Smith: That would be very helpful, and I would expect no less from a person whose own career is so distinguished. All of us admire the way in which you operate your department. I know that you want to hear about these unusual cases. But let me say also that there is no mention made of these war veterans allowances and the pensions advocate himself does not complain.—it is not his job to

complain—but he has pointed out in very clear terms that he has been waiting for the documentation so that he can prepare his case. He cannot touch the case until he receives the documentation.

From my understanding of the nature of this man's trouble, I am satisfied that it is serious. I will give you the man's name and number so that you can endeavour to obtain help for him—that is all I ask. I am sorry if I appear to be a little passionate, but I know the family and you get close to people in these matters.

Mr. Hodgson: I will be glad to do whatever can be done in this case.

Senator Bonnell: We will hire you as the welfare officer in these cases!

Senator Welch: How do you feel about a war veteran who has never seen active service—he got as far as England and came back home—who is perfectly well in every respect and is drawing a war veterans allowance and has a government job? Is that man eligible for a pension? As I say, he has never seen service other than wearing a uniform as far as England.

Mr. Hodgson: I am not quite certain that I understand the question. But if the person in question is an ex-serviceman, and not a veteran, he could then be covered under the Pension Act for a disability he incurred which was directly attributable to his service, but not for any other disability that may have been incurred during his period in uniform. That is the basis difference between an ex-serviceman and a veteran.

Under the Pension Act a veteran is covered by what is known as the insurance principle. In other words, if the veteran had incurred a disability during his military service, regardless of whether or not it was attributable to his service, he would be covered under the Pension Act. But the serviceman who is not a veteran would only be covered for a disability which was directly attributable to his service.

Senator Phillips: The amendment removing the ceiling on assets is a very welcome one. I have had several cases during the last year where people have used their re-establishment credit to purchase a farm or a home, and because of the fact they are now ill and unable to farm or to maintain their home. The VLA required them to have more property than the average city lot but when they sold the property they were consequently eliminated from receiving their alms. Can you give me a figure as to the number of people who have been eliminated in this way during the last year?

Mr. Thompson: I am not sure I understand the question. How many people have been declined or ruled ineligible for a war veterans allowance because of excess personal property?

Senator Phillips: Yes.

Mr. Thompson: I do not have that figure, sir; it is not kept here and I am not certain that it is retained in the districts. Although I do not believe it is included in our statistical system, I will check.

Senator Phillips: Then how did you arrive at the decision to remove the ceiling on personal assets? You must have had a number of cases in mind, and I would like to know how many were affected.

Mr. Thompson: I will check, but I am quite certain that it was not built into the statistical system. This situation has been apparent for some time, and the decision was made to remove it.

Senator Bonnell: One could be rejected because he did not have sufficient war service, and another because of his assets, but you do not have the reasons for rejection?

Mr. Thompson: I would say off-hand that I do not believe that is built into the statistical system, but I could check.

Senator Phillips: Mr. Chairman, surely they must be in a position to tell us how many have been eliminated as recipients of war veterans allowance for various reasons?

Mr. Thompson: I have been informed that the districts do have the reasons for declining applications during the previous 12 months. It is not retained as a specific statistic, but declined applications are retained for a 12-month period. If the figure is important it can be obtained on a district-to-district basis.

Senator Phillips: Do you mean that the districts do not report to you the numbers that have been removed during the year?

Mr. Thompson: They are reported in the number of allowances that have been cancelled. Normally the statistics do not include the reason for cancellation.

Senator Phillips: I am not asking for the reasons, but the total number.

Mr. Thompson: I will endeavour to obtain it, but I am not certain that it is available. Is it the total numbers who have been declined?

Senator Phillips: No; it is those who have been in receipt of war veterans allowance which for some reason, such as the sale of property, has been discontinued.

Mr. Thompson: In other words, not those who were refused initially, but those who were in receipt of the allowance which was cancelled because of excess personal property?

Senator Phillips: Yes.

Mr. Thompson: We will endeavour to obtain that information.

The Deputy Chairman: Has an assessment been made of the number of veterans who could not qualify earlier, because of the property requirements, who might do so now that those requirements are listed?

Mr. Thompson: Taking into consideration the study of the income of the age group with which we are concerned in Canada,

the calculation indicated that possibly 3,440 would be eligible. Applications by three-quarters of that group would result in an increase of 2,580 and 50 per cent would be 1,720. It is a very difficult calculation, but the best figures available at that time resulted in those upper and lower limits of the bracket.

Senator Phillips: Mr. Chairman, I do not wish to enter into an argument with my colleague from the same province as myself. I felt our earlier discussion was very pertinent to the act.

I would now like to move into another aspect of war veterans allowance—hospitalization. Formerly, one of the benefits received by a recipient of war veterans allowance was hospitalization. This is now available to all, and I receive numerous complaints that recipients of war veterans allowance experience great difficulty when seeking admission to hospital. I shall refer later to specific cases, as Senator Smith did. Despite the fact that they are not covered by this act, I include pensioners who are not war veterans on allowance. What is the policy of the Department of Veterans Affairs in this regard, and how is priority provided for admission to hospital?

Mr. Hodgson: There has been no recent change in the veterans' treatment regulations governing this. Any veteran suffering from a pensionable disability is entitled to treatment at departmental expense for that disability. Any veteran who is a recipient of war veterans allowance, or who could be a recipient but for the fact that he is receiving old age security and guaranteed income supplement, is entitled to treatment for any condition at government expense. These rights are continuously observed in our own hospitals. Therefore, I see no reason for any veteran who for medical reasons needs hospitalization not receiving it at our institutions.

With regard to the institutions which we have transferred to other authorities—such as Sunnybrook Hospital in Toronto, Lancaster Hospital in Saint John, New Brunswick and Ste. Foy Hospital in Quebec City—we continue to maintain an entitlement staff within each to determine the entitlement of veterans. In each of those hospitals a number of priority beds are provided for veterans. This is stipulated in the transfer agreement with respect to the three hospitals. After the transfer of Sunnybrook Hospital there was a period during which there seemed to be some degree of unhappiness in connection with alleged non-admission of eligible veterans. This was years ago and in the last few years the complaints have been very few, and justified complaints even fewer.

If Senator Phillips is aware of particular cases, we would be very happy to investigate and ensure that the intent of the regulations is carried out.

Senator Phillips: Since you stated you would be happy to investigate specific cases, I will put this on the record and give names and dates after we adjourn. A particular individual I have in mind is 85 years of age, a veteran of World War I, in which he was gassed. In World War II he won the B.E.M. He became very ill in the morning and the family doctor, finding that no beds were available at the Civic Hospital, had an ambulance take the man to the National Defence Medical Centre. The hospital was 40 per cent occupied, and, as you know, they have a rule at that hospital that

there should not be more than 60 per cent occupancy, despite the fact that they have staff for 120 per cent occupancy. He meets this particular individual, Dr. Potvin, who tells him that he is not running a baby-sitting service and refuses to admit him; and it was only after the granddaughter phoned his Legion branch that he was admitted. Then, after being in there for a week, he was told to call a cab and go home. He arrived home in his pyjamas. His clothes were at home because he left home early in the morning in an ambulance.

I think this is pretty damn shoddy treatment for a veteran of two wars and 85 years of age. I was incensed when I heard about it two or three days ago. It is one that I do not intend to let go. I can assure you that I am going to be on your back on that one for some time, until you correct that situation.

Mr. Hodgson: I have no previous knowledge of this particular case. The National Defence Medical Centre is, of course, not an institution operated by the Department of Veterans Affairs; but if the senator will give me the name and particulars of this particular veteran, I shall be very pleased to look into it and see what could or should have been done.

Senator Phillips: It is my understanding that it is called the Rideau Terrace . . .

Mr. Hodgson: The Rideau Veterans Home?

Senator Phillips: Yes. It is right nextdoor to this hospital. When it was built as a tri-service hospital, it was supposed to look after war veterans. I should like to go into this aspect and clarify that before I start getting on your back on this.

Mr. Hodgson: It is true that the National Defence Medical Centre does provide beds for veterans in the Ottawa area under a special arrangement, and I will be very pleased to look into this case.

Senator Thompson: Mr. Chairman, in making my remarks, I join with other senators in saying that I appreciate the distinguished service of the deputy minister and his colleagues. I am sure we do not wish to imply in our questioning that we think you are inhuman. However, we may have questions with respect to limited aspects of the act.

I assume that one of the principles embodied in the War Veterans Allowances Act is that veterans, because of their war service and the emphasis on duty implied by their fighting for their country, are in a privileged position. If that is a principle embodied in the act, I should like to ask how you arrived at the maximum figures. Did you look at the maximum of welfare benefits given by each of our provinces, or at the poverty figures arising from the Poverty Committee investigation, and decide that "privilege" means that the amount of money will be at least above the maximum of welfare provided by any province, and above the poverty figures? On what basis did you arrive at the figures?

Mr. Hodgson: Mr. chairman, I think the record will show that one of the principles of the act is that the service of these people should be recognized and that they should be given economic support when needed. The actual amounts of rates and ceilings is a

subject which has been under continuous review for many years, and periodically the matter is reviewed by the government and a decision made. It will be appreciated that the decision made at any particular time is of itself a policy decision.

With respect to this bill, I think I can best say that the increases proposed in both the rates and the ceilings are identical with those proposed in the old age security bill for OAS and GIS recipients; in other words, that the two are being adjusted concurrently, not in relation to any third standard but in relation to each other.

Senator Thompson: But do you take, for example, the provincial welfare benefits that someone would receive in British Columbia or Ontario and say, "Recognizing that this is an act which gives privilege to veterans, in view of the welfare benefits paid by the provinces, we will see that a veteran gets as much as, if not more than, the welfare benefits provided by any province"? Have you looked at those figures?

Mr. Hodgson: The War Veterans Allowances Act and, indeed, the Pension Act have been escalated almost every two years for many years, and at these various times of review all of the other relevant statistics are taken into account by governments.

Senator Thompson: All provincial welfare benefits are taken into account?

Mr. Hodgson: Provincial, federal, and any other relevant figures are taken into account before a determination is made. The point I was trying to make earlier was that this bill, in a sense, could be regarded as being mechanical rather than fundamental. That is to say, what is happening is that the increase that is being instituted in war veterans allowances is simply the precise increase that is being proposed for old age security. It is not in relation to other criteria; it is simply in relation to the change that is happening in OAS. So the relativity of the two will remain unchanged.

Senator Thompson: I have two further questions. One is that under the war veterans allowances, am I to understand that a veteran who lives overseas cannot receive this?

Mr. Thompson: A veteran, to qualify as a recipient of the allowance, must live in Canada for 12 months before leaving the country. He must live in Canada for 12 months, and he must leave as a recipient. He can then go anywhere in the world and draw the war veterans allowance. But if he is living outside the country and applies, he cannot be granted the allowance initially.

Senator Thompson: Why is that? Can you give me a reason for that?

Mr. Thompson: Again, this has been a question of government policy. Initially it could not be paid under any circumstances outside the country. The act was then amended to permit it to be paid. The thought was expressed at that time that there were people whose families lived in other countries, and this would enable them to join them. It was felt also that some people, for reasons of health, should be allowed to go. So this part of the act was amended to

enable the people going out of the country to take the allowance with them. The act was not amended so that one could remain outside the country, apply for and receive benefits.

Senator Thompson: Yet, as I understand it, you can live outside the country and still receive your old age pension.

Mr. Thompson: I may be wrong in my understanding, but I do not believe you can send in for it. You can take it out with you, as you can under the War Veterans Allowance Act. You can receive the allowance here and, if you have been living in Canada for one year before your departure, you can take it out with you. However, initially, you cannot write in for it from abroad and receive it.

Senator Thompson: My third question relates to the formula for the assistance fund. Could I direct that question to you, Mr. Rider?

Mr. Rider: It is applied in a uniform manner in all district offices. There are 18 district offices where there is a district authority . . .

Senator Thompson: My question is at to how you arrive at the formula, not the manner in which it is applied. Is there uniform application across Canada?

Mr. Rider: Yes, senator.

Senator Thompson: In other words, in an area such as Toronto, where the cost of living is higher, the same basis is applied?

Mr. Rider: No. The same items are included in the formula, but not necessarily the same dollar amounts. For example, shelter costs—which include rent, taxes, utilities and fire insurance—are based on what the veteran pays wherever he happens to live in Canada. The food formula is a calculated amount, which varies according to the costs in the various parts of Canada. Items such as clothing and personal care are fixed costs, but the bulk of the items in the formula are either allowed at the actual costs to the individual or at an amount which is related to the local situation.

The Deputy Chairman: Does that not freeze the veteran at whatever level he is when he makes his application? In other words, if he is in poor circumstances when he makes his application he obviously is not going to have very high living costs, such as taxi bills, clothing bills, and his food bill might be somewhat skimpy, too. Is there any way of applying the formula so that he can better his standard of living? If you criteria are his costs at the time he makes his application, then I do not see how he can improve his standard of living.

Mr. Rider: The assistance fund cases are reviewed once a year, Mr. Chairman, and if costs have changed, then the welfare officers report this and a recalculation is made. If at that time there is some leeway, then the amount of assistance is increased. In other words, if the rent goes up at any time, the man can write in and tell us, and a recalculation will be made.

The Deputy Chairman: What if his food bill increases?

Mr. Rider: His food allowance is not based on what he says it costs; it is based on the formula, which is escalated annually according to the consumer price index.

The Deputy Chairman: But he is not eating any better; he is at the same level he was at when he applied for benefits. The only difference is that it is costing more, and because it costs more his allowance is increased, but his fare has not improved; his standard of living has not improved, as I understand it. I should like to have that point cleared up.

Senator Phillips: And he is still below the poverty line, as you pointed out.

Mr. Rider: That would be the case . . .

The Deputy Chairman: So that if a person is at a relatively low level as far as his standard of living is concerned when he comes in, then he is kept at that level. There is no way that he can improve his standard of living.

Mr. Hodgson: Mr. Chairman, I wonder if there is a misunderstanding. There seems to be the impression that a veteran who happens to be living frugally receives less in the way of food allowance from the assistance fund than one who is eating well, and that, therefore, the former of these two people might be suffering from year to year. This is not the case. The food allowance in both cases is the same.

Mr. Rider: That is right.

The Deputy Chairman: The same as what? I do not quite follow that.

Mr. Hodgson: It is the same allowance for both the frugal one and the less frugal one.

Senator Bonnell: The one eating hamburger and the one eating T-bone steak receive the same amount of money.

Mr. Hodgson: Yes, and that amount of money is escalated, as Mr. Rider said, each year, based on the consumer price index.

The Deputy Chairman: I understood him to say that it was based on the actual costs.

Mr. Rider: No, I said that the shelter costs are actual costs; the food allowance is a calculated amount.

The Deputy Chairman: Well, it is calculated on the basis of the standard for the area in which the veteran lives.

Mr. Rider: Yes.

The Deputy Chairman: So, if he is living in a poor community, then he is worse off than a veteran living in a more affluent community. That is what I am getting at.

Mr. Rider: For example, the same amount is allowed for food for all recipients in Newfoundland, which is a DVA district, and the calculations were made according to the 18 districts across the country. The allowance for food varies, depending on the part of the country the veteran lives in. For example, the amount allowed for food in Newfoundland is greater than that allowed in Charlotte-town, Montreal, Hamilton or London, because the studies show that food costs are higher in Newfoundland than in those areas.

The Deputy Chairman: Yes, but that still does not answer my question. Does the veteran have to stay at the level he is at when he comes in? That is what I am trying to get at.

Mr. Rider: For example, if a single man comes on the assistance fund, he is allowed just about \$58 a month for food. The only time that amount changes is when it is escalated annually according to the consumer price index.

The Deputy Chairman: So that if he was paying \$58 a month before he came in, then he gets \$58 a month; and if he was paying \$65 a month for food when he came in, then he again will only get \$58 a month.

Mr. Rider: That is right, and if he was paying \$42 a month when he came in, he would receive \$58 a month.

Senator Bonnell: I has been so long since I indicated I wanted to ask a question that I have forgotten what my question was.

Somewhere along the line I believe the Deputy Minister said that certain people who were receiving war veterans allowance at one time in their lives might lose their allowance because they become eligible for old age security payments and are, therefore, no longer qualified for actual dollar payments under the War Veterans Allowance Act. However, these people, as I understood what the Deputy Minister said, would still be entitled to free drug treatments, free appliances, and so forth—in other words, war veterans allowance benefits as opposed to cash. In this the case for all war veterans allowance recipients who were previously eligible, with the only reason for their being disqualified being the fact that they are receiving old age security? Would they still be entitled to free drugs, free appliances, free glasses and so forth?

Mr. Hodgson: Any veteran who is a recipient of war veterans allowance, or could be a recipient of war veterans allowance but for the fact that he is receiving OAS or GIS, would have the full treatment rights under the treatment regulations.

Senator Bonnell: Would I be correct in thinking that a veteran aged 65, who had not up to that time applied for war veterans allowance because he was working and had an income, and who does not now qualify because he is eligible for old age security, could apply for free drugs and other benefits under the War Veterans Allowance Act?

Mr. Hodgson: If his income is in excess of the tests under the War Veterans Allowance Act, then he could not. However, he could be a recipient of WVA if he were not receiving OAS. Under those circumstances, he would have the treatment rights.

I do not believe I can explain that by giving you an example. However, any person who might have qualified for war veterans allowance, if he were not receiving the old age security payments, would be covered.

Senator Bonnell: So it is possible that a lot of people over the age of 65, who never applied because they were then in the work force and are now retired, are entitled to free drugs and free appliances, et cetera, if they make an application to the War Veterans Allowance Board for assistance, if their income from old age security is all that prevents them getting it?

Mr. Hodgson: If the only reason is the fact that they are receiving old age security or guaranteed income supplement, yes.

Senator Bonnell: There are people receiving war veterans allowance who eventually become so disabled that they are no longer able to look after themselves at home; they end up in nursing homes rather than in active treatment hospitals, or in some of the government institutions, where the rate to maintain them could be anywhere from \$15 to \$30 a day. The war veterans allowance certainly would not pay that rate; they would not have enough income. Is the assistance program broad enough so that the full rate of maintenance can be paid for in an institution, nursing home or somewhere else, at the actual cost of maintaining that veteran? In other words, if it costs \$15 a day to keep a veteran in a nursing home, will the assistance program under the welfare department pay that extra money?

Mr. Hodgson: I am afraid my answer will have to be tentative. We are getting a little distant from the subject of this bill. The entitlement to treatment under the veterans treatment regulations would apply in the case of either active treatment or chronic care. In either case it could be obtained for a war veterans allowance recipient, or somebody who except for receipt of OAS or GIS could be a war veterans recipient, at departmental expense. However, this does not apply to domiciliary care, a bed and board situation, where there is no hospital treatment at all. The reason I say my answer is tentative is because of the grey area that lies between domiciliary care, bed and board, on the one hand, and chronic care, which is a form of hospitalization, on the other.

Senator Bonnell: One becomes more or less a custodial welfare type of thing, and should therefore be paid for under the assistance program of welfare for veterans, rather than through the war veterans allowance. I can see that a man in hospital receiving chronic care is entitled to free medical benefits.

Mr. Hodgson: That is correct.

Senator Bonnell: That is the same as if he is in an active hospital. I am talking about the man who is beyond that; he has fought for his country, he is totally disabled, he is bedfast and needs care. Is he to rely on his neighbours and friends paying for him, or will the welfare department of the Veterans Affairs pay the actual cost in a maintenance home?

Mr. Hodgson: I will answer that question in part, and perhaps Mr. Rider will supplement what I say. In the departmental

institutions we accept veterans for domiciliary care, provided there are beds that are not required for chronic care or active treatment of veterans. In those instances we do take care of a certain number. I do not know the total number across Canada who might be involved in such domiciliary care, in the sense of bed and board; it would be something over 1,000 and less than 2,000—something of that order. In the case of a man who may be going into an institution other than ours, the only other resources we have are war veterans allowance and the assistance fund.

Mr. Rider, can you amplify that?

Mr. Rider: The assistance fund, of course, does not provide for a payment such as you mentioned, senator. In other words, the amount available from it, the difference between the war veterans allowance rate and the ceiling, would be inadequate to cover that. When a veteran is in, as you say, a nursing home, the war veterans allowance is paid, the assistance fund is paid to the maximum, and the community, I think through provincial funds, will often, when we are paying all we can, subsidize the veteran so that he can stay, and his way will be paid for in that home.

Senator Bonnell: The province pays?

Mr. Rider: Yes, sir.

Senator Bonnell: But the Department of Veterans Affairs does not pay for that veteran if he gets into a home?

Mr. Rider: We pay up to the ceiling of war veterans allowance through the war veterans allowance and the assistance fund, and then the province picks up the rest.

Senator Bonnell: In other words, you have a ceiling on the rent you pay?

Mr. Rider: That is right.

Senator Bonnell: You only pay rent up to so much per month?

Mr. Rider: We can provide only so much income a month to the man.

Senator Bonnell: But you said earlier you supplied his needs. Here is a man who can prove his needs, because he can give you the bill each month, how much it is costing him; but you do not really supply his needs, you only supply his needs provided he maintains himself in a home somewhere.

Mr. Hodgson: It will be recognized that this veteran is also a citizen, and as a citizen he is entitled to all the rights of other citizens. There are only certain things that arise from military service. For example, old age is not something which, of itself, will arise from military service, although premature old age certainly might.

Senator Bonnell: We have the Old Age Security Act, which takes care of that, plus the guaranteed income supplement and the Canada Pension Plan that help. We have all those things, but they take care

of all citizens. Here we are dealing with this special person, a veteran who has fought for his country, and so on. We hate to see him on the road depending on the neighbours to look after him in a home, and I think some consideration should be given to looking after these men in custodial type homes.

Senator Phillips: I support Senator Bonnell's viewpoint. As I pointed out earlier, one advantage the recipient of a war veterans allowance had over any other citizen was hospitalization. Once hospitalization was made general for everyone, he lost that advantage. Now, if he goes into a nursing home or an old people's home, under what terms does he go in? Most of the homes operated by the provinces or privately allow the old age recipient \$15 and the province pays the difference. What do you allow the recipient of a war veterans allowance?

Mr. Rider: He goes in under exactly the same conditions. His war veterans allowance is paid, his assistance fund is paid; the home allows him \$15, the same as it would anybody else, and it pays the balance.

Senator Phillips: In other words, it has been decided that at 65 he is no longer a veteran and has no advantage over anyone else.

Mr. Rider: No, sir. He is still a veteran and he is getting the benefits that Parliament has authorized the department to pay.

Senator Phillips: What are those benefits above age 65 that the ordinary old age recipient does not receive?

Mr. Rider: At age 65 he can have old age security, he can have the guaranteed income supplement from the Department of National Health and Welfare, and any income that is required to take that up to the ceiling of the War Veterans Allowance Act will be paid as war veterans allowance.

Senator Phillips: Every other citizen receives that.

Mr. Rider: No, sir, every other citizen does not receive war veterans allowance, because he must be a veteran.

Senator Phillips: But he receives equivalent benefits, the same items that you cited, Mr. Rider.

Mr. Rider: Some provinces subsidize old age security in guaranteed income supplements; some do not. This varies greatly between provinces.

Senator Phillips: The bill introduces a new term, "income". It also refers to the old term, "casual earnings". What is the distinction between "income" and "casual earnings"?

Mr. Thompson: Income is referred to in section 6 of the act in that it lists income which does not count as income; it lists the exempt income. The regulations list the things that are considered as income. The act says:

For the purpose of the act and these regulations "income" includes the net amount or value of all income, gratuities,

contributions and payments received whether in cash or kind, except . . .

Then it lists the exceptions. Among the exemptions that are provided for in the act are casual earnings. These casual earnings of the recipient are not defined in the act. They are defined in the regulations as being income that is not in excess of \$1,000 for a single recipient and \$1,500 for a married recipient. That was recently increased from \$800, single, and \$1,200, married, and it is now \$1,000 and \$1,500. So the difference is only in the fact that the act provides that casual earnings are not income, and the regulations define what casual earnings are, income from any employment up to \$1,000, single, or \$1,500 married. That is what makes the distinction between casual earnings and income.

Senator Phillips: For clarification, let us say an individual has income of a certain amount, say the maximum allowed under the act, from bank interest, bond coupons, and so on. Is he then allowed to make these casual earnings in addition to that?

Say that a war veteran receives the maximum for a married person or a single person and also has the maximum income. What casual earnings can he have in addition to his income plus his war veterans allowance?

Mr. Thompson: Actually a single man may have casual earnings of \$1,000 at any time during the twelve-month period. Earnings up to \$1,000 do not count as income; they start to count on the first dollar above \$1,000. He can also use up the \$40 a month to the total of the difference between the rate and the ceiling, to the extent of \$480 a year. So, in the absence of any other income except the war veterans allowance, he could earn up to \$1,480 a year without the amount of his allowance being altered.

Senator Phillips: I am still not satisfied that the interest from moneys derived from selling a home are not included in casual earnings.

Mr. Thompson: Under this bill, when a man sells his home the cash that he gets for it will not count against his allowance, but the interest from it will. The only interest that is exempted by the act is to the amount of \$50. Anything above that counts as income, but the cash itself will not work against him.

Senator Phillips: This particular individual receiving interest cannot have casual earnings in addition to the interest?

Mr. Thompson: This would depend on a combination of circumstances. The interest could become sufficient to make him ineligible for the allowance, depending on how large an amount of capital we are speaking of. If he is in fact receiving the allowance as a recipient, he is entitled to those basic casual earnings as casual earnings, not as interest income, without interfering with his allowance, up to the ceiling of \$1,000, single, and \$1,500 married. As long as he is a recipient, he is entitled to those casual earnings exemptions as casual earnings.

Senator Phillips: Let us say he receives \$500 a year in interest, then his casual earnings would be reduced by that amount?

Mr. Thompson: Actually, sir, because of the specific exemption of \$50, his casual earnings would not be reduced by that amount. His total income would be affected by this, but his casual earnings would not be. If he received \$500 in interest, \$50 of that is exempt by the act, so he has \$450 of income, and that \$450 of income—if I follow your figures correctly—would go against the \$480, which is the difference between the rate and the ceiling, which would leave him \$30, plus the \$1,000 casual earnings that he is permitted, so he would be permitted \$1,030, in the absence of any income other than that which you have specified.

Senator Phillips: Thank you.

Senator Bonnell: Under the old act, if a man sold his home, receiving \$500 or \$1,000 per year payment on that home until it was paid for, that was counted against him as income—is that correct?

Mr. Thompson: That is correct, unless there was a mortgage payable—in which case there is a regulation which says that he could offset the mortgage receivable against the mortgage payable; only the difference would count as income.

Senator Bonnell: Under the new act, that no longer counts as income?

Mr. Thompson: Under the new act—that is, under the act as it will be amended if this bill is passed—the interest portion of the mortgage receivable will count as income. The principal portion of the mortgage receivable will count as personal property, the return of assets, and will not count against him, but the interest would have to count against him the same as interest from bonds.

Senator Bonnell: But the capital part of the payment would not count as income after this act becomes law?

Mr. Thompson: The principal portion will not count as income.

Senator Bonnell: So there are quite a few veterans in that category whose payments will be adjusted?

Mr. Thompson: Yes, there will be a number that will be affected.

The Deputy Chairman: Mr. Thompson, could you tell us how many WVA recipients are under 60 years of age?

Senator Bonnell: Are you talking of women, as well—at age 55? the age specified in the act for women is 55.

Mr. Thompson: The figure is approximately 14,000. I can get you more precise figures.

The Deputy Chairman: Honourable senators, do you want to take the bill as a whole, or clause by clause?

Senator Smith: I move that we report the bill without amendment.

Before adjourning, we wish to express our thanks to the witnesses who have come here today and who have assisted us so much in our work. Thank you very much.

Hon. Senators: Agreed.

The Deputy Chairman: Motion carried.

The committee adjourned.

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FIRST SESSION—TWENTY-NINTH PARLIAMENT

1973

THE SENATE OF CANADA

PROCEEDINGS OF THE
STANDING SENATE COMMITTEE ON

HEALTH, WELFARE AND SCIENCE

The Honourable CHESLEY W. CARTER, *Deputy Chairman*

Issue No. 3

THURSDAY, APRIL 5, 1973

Complete Proceedings on Bill C-147
"An Act to amend the Old Age Security Act"

REPORT OF THE COMMITTEE

(Witnesses and Appendices—See Minutes of Proceedings)

THE STANDING SENATE COMMITTEE ON
HEALTH, WELFARE AND SCIENCE

Chairman: The Honourable Maurice Lamontagne, P.C.

The Honourable Senators:

Argue	Goldenberg
Blois	Hastings
Bonnell	Inman
Bourget	Lamontagne
Cameron	McGrand
Carter	Phillips
Croll	Smith
Denis	Sullivan
Fournier (<i>de Lanaudière</i>)	Thompson
Fournier (<i>Madawaska- Restigouche</i>)	van Roggen (20)

Ex officio Members: Flynn and Martin

(Quorum 5)

Order of Reference

Extract from the Minutes of Proceedings of the Senate,
Wednesday, April 4, 1973:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Denis, P.C., seconded by the Honourable Senator Fournier (*de Lanaudière*), for the second reading of the Bill C-147, intituled: "An Act to amend the Old Age Security Act".

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Denis, P.C., moved, seconded by the Honourable Senator Fournier (*de Lanaudière*), that the Bill be referred to the Standing Senate Committee on Health, Welfare and Science.

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative."

ROBERT FORTIER,
Clerk of the Senate

Minutes of Proceedings

Thursday, April 5, 1973.

(3)

Pursuant to adjournment and notice the Standing Senate Committee on Health, Welfare and Science met this day at 10.05 a.m.

Present: The Honourable Senators Carter (*Deputy Chairman*), Argue, Bonnell, Cameron, Croll, Denis, Fournier (*de Lanaudière*), Martin and Smith. (9)

Present but not of the Committee: The Honourable Senators Fournier (*Restigouche-Gloucester*), McElman, McLean, Molgat, Petten, Welch and Yuzyk. (7)

In Attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

The Committee proceeded to the consideration of Bill C-147, "An Act to amend the Old Age Security Act".

The following witnesses were heard in explanation of the Bill:

Norman A. Cafik, M.P.,
Parliamentary Secretary to the
Minister of National Health and Welfare.

Miss N. O'Brien,
Director, Legislation and
Policy Development and Review
(Income Security Branch),
Health and Welfare Canada.

During the discussion that followed, the officials of Health and Welfare Canada were requested to supply in writing additional information relating to Bill C-147, which was unavailable at the time of the meeting. It was *agreed* that this material be printed as an appendix to today's proceedings. (*See Appendices A, B and C*)

On Motion of the Honourable Senator Croll, it was *Resolved* to report the said Bill without amendment.

At 11.35 a.m. the Committee adjourned to the call of the Chair.

ATTEST:

Patrick J. Savoie,
Clerk of the Committee.

Report of the Committee

Thursday, April 5, 1973.

The Standing Senate Committee on Health, Welfare and Science to which was referred Bill C-147, intituled: "An Act to amend the Old Age Security Act", has in obedience to the order of reference of April 4, 1973, examined the said Bill and now reports the same without amendment.

Respectfully submitted.

C. W. Carter,
Deputy Chairman.

The Standing Senate Committee on Health, Welfare and Science

Evidence

Ottawa, Thursday, April 5, 1973

The Standing Senate Committee on Health, Welfare and Science, to which was referred Bill C-147, to amend the Old Age Security Act, met this day at 10.05 a.m. to give consideration to the bill.

Senator Chesley W. Carter (*Deputy Chairman*) in the Chair.

The Deputy Chairman: Honourable Senators, we have before us Bill C-147, and with us is Mr. Norman Cafik, M.P., Parliamentary Secretary to the Minister of National Health and Welfare. I will ask him to introduce the departmental officials with him and to make an opening statement.

Mr. Norman A. Cafik, M.P., Parliamentary Secretary to the Minister of National Health and Welfare: Thank you very much, Mr. Chairman. I have with me today Miss N. O'Brien, Mr. B. W. Mellor and Mr. J. B. Bergevin, who will assist me. I would like to apologize for the minister's being unable to attend today. I am sure all senators know of the overall review of social policy in Canada leading up to a federal-provincial conference of welfare ministers which will take place during Easter week. The minister, by long-standing commitment, has spent this week visiting the representative ministers, province by province, to give them a foreknowledge of what will be proposed at the federal-provincial conference. I will do whatever I can to explain the bill and to deal with questions which you may put forward.

By way of a brief opening statement, Bill C-147 is quite short and simple. Basically it is designed to achieve the following objectives.

Clause 1 is an amendment intended to increase the universal amount of the old age security payment to \$100 per month.

Clause 2 is a technical amendment required because last year the increases in old age security and guaranteed income supplement were retroactive to January 1. At that time it was necessary to amend the act to provide for such retroactive payment. This year we wish to regularize the situation by adopting the normal fiscal year end of March 31, rather than January 1. This amendment will return the provision to its original form.

Clause 3 is concerned with the calculation of guaranteed income supplements as it relates to the Canada Pension Plan. Previously, Canada Pension Plan income for the purpose of calculating guaranteed income supplement payments was projected into the current year, whereas income from all other sources was in relation to the

previous year. In order to correct that anomaly, this amendment is put forward so that income from the Canada Pension Plan will be treated as is any other form of income; it will be treated in terms of the preceding year rather than projected for the current year. This amendment will normalize that situation.

I could emphasize or try to underline the importance that we attach to the bill. As all honourable senators know, this is effective April 1. The cheques will be going out—hopefully, if it is given royal assent—for payment by the end of the current month; and in order to be able to do that it is important that we have royal assent as quickly as possible, to be able to meet that deadline, so that old age pensioners will, in fact, receive in the current month the benefits they will be entitled to under this act.

Thank you, Mr. Chairman.

Senator Croll: Let us assume for a moment an applicant who wants the guaranteed income in addition to the old age pension. Let us take a man from an outlying district—say, Williams Lake in British Columbia, a cove in Newfoundland, a small town, or a large city, or somewhere else. How do you deal with him, to find out what you want to know about him? A man writes to you. Take us through the procedures to show us what is common to the applicants or what is the difference between them, if there is a difference.

Mr. Cafik: You mean with respect to how he applies, and how he receives the guaranteed income supplement?

Senator Croll: Yes; that is what I want.

Miss N. O'Brien, Director of Legislation and Policy Development and Review, Income Security Branch, Department of National Health and Welfare: We send an application form to each pensioner who received the guaranteed income supplement in the previous year.

Senator Croll: Start with one who had never received it before and who writes to you and says, "I want the supplement."

Miss O'Brien: We send him an application form, which is as simple as possible, on which he gives us details of his name and so on, the name of his spouse, if any, his marital status, and his income from all sources for the previous year. There are a number of sources listed. We also send him a booklet which explains the program and is also a guide to completing the application form. If he has any problems in completing it, and lets us know, we will be happy to send someone out from the regional office to see him. If he is closer to an income tax office, and it is a question of how he

should declare his income, or what he has to declare, and he is not sure, he can look to them for help and it will be provided. In addition, if there is a Canada Pension Plan office nearby, he can go there. Certainly, he can come to us and explain his problem. If it is something which can be explained by correspondence, we will do that; if not, we will arrange to have one of our people go out to see him.

Senator Croll: When I speak of Williams Lake, I assume you know where that is.

Miss O'Brien: Yes.

Senator Croll: He sends in his application form. It may need some correction. Do you accept that, and do you deal with it at that time and say he is entitled either to the full or partial supplement?

Miss O'Brien: Yes, indeed.

Senator Croll: Do you ever check back?

Miss O'Brien: The income that anyone declares is subject to a check with National Revenue taxation. That is done, of course, after the fact. It is done because the National Revenue taxation records are not available for the previous year at the time the person may be applying; but subsequently a check can be made of the taxation records. Pensioners are informed of this, that they are subject to a check by National Revenue taxation.

Senator Croll: And National Revenue will give you the information for that purpose?

Miss O'Brien: We will provide them with what has been told to us by pensioners. They will tell us if there are discrepancies between their information and ours, and we will approach the pensioner.

Senator Croll: Will you give him his cheque immediately and check his case afterwards?

Miss O'Brien: That is right.

Senator Croll: Do you sometimes find an overpayment?

Miss O'Brien: Yes, sometimes. These have to be recovered from future payments. We try to assess the individual's circumstances and income, and we gear the amount of recovery, of what will be deducted from his future entitlement, to a level that will not cause hardship. We will spread it over quite a period.

Senator Croll: Compared with the man in Toronto or Ottawa, who can walk into an office and be attended to, it may take two months before a man living in an outlying district can get it. Will you pay him as of the date of application or as of the date that you reached your conclusion? When?

Miss O'Brien: Even before the date of application, if there is entitlement. There is provision in the law for going back 12 months; so, even if he was late, we would pay him retroactively. He applies each year for benefits for one fiscal year. Subsequently, each year

that same man would receive an application and he would apply for the new year. His entitlement would be based on his income for the previous year. He would give a statement of his income each year.

Senator Croll: What is the percentage of error over the year?

Miss O'Brien: I do not think we can give you an exact figure.

Senator Croll: I am not interested in an exact figure—an approximate one.

Miss O'Brien: It is not yet possible to check 100 per cent of the accounts with National Revenue. We will be computerizing the OAS program, but it has not been done yet.

Senator Croll: A man in an outlying district receives the same kind of treatment as one who lives in a large metropolitan area?

Miss O'Brien: Certainly.

Senator Croll: The same treatment?

Miss O'Brien: Certainly. If he cannot come to us, we will go to him.

Senator Argue: My question is perhaps outside the scope of the bill. A couple of months ago I was speaking to a lady who has been entitled to receive old age security for five years, but for reasons that I cannot understand she has never applied for it and does not receive it. She does not speak English very well, and she is terrified of becoming involved with the government. I didn't know there were any people like that! If she applied now, could she get her cheque backdated to when she became eligible, or does it apply for only one year?

Miss O'Brien: There is a limit of one year.

Senator Argue: We had an interesting discussion in the Senate yesterday. The suggestion was made that the old age security pension should be increased to \$200 a month. What would that increase cost the country?

Senator Martin: That would come under public assistance.

Senator Argue: It would reduce the guaranteed income supplement, but what would it cost the country if the pension of \$100 was increased to \$200?

Senator Denis: I have the figure for an increase to \$150. It is \$1.1 billion.

Senator Croll: \$1.1 billion more than it is now?

Senator Denis: Yes. For persons aged 65 and over, if the pension is increased to \$150 the increase would amount to \$1.1 billion.

Mr. Cafik: I have some tables in front of me. We have not multiplied them out, but at the moment, in 1972-73, the number of people receiving OAS benefits is 1,803,378. Your proposal, senator,

would be \$100 times that figure, which I think would be \$1.803 billion.

The Deputy Chairman: And if you doubled that?

Senator Argue: You would save a little on the guaranteed income supplement.

Mr. Cafik: I do not think there would be any effect on the GIS, because one is not related to the other; one is not considered as income in relation to the GIS.

Senator Argue: What if the eligible age were reduced to 60? I am sure you have had similar questions before in the House of Commons, but I thought that for purposes of third reading debate it might be interesting to have this information.

Mr. Cafik: In response to the question as to lowering the age, say, from 65 to 60, if that were to be done on an increment of one year at a time, which is being considered by many people, the effect for 1973-74 would be an increase in expenditures of \$191 million; for 1974-75, which would take the 63s and 64s into the system, the expenditure would be another \$413 million; for 1975-76, which would take in the 62s, 63s and 64s, the expenditure would be \$667 million; for 1976-77, which would take in 61 through to 64, it would be \$953 million; and for 1977-78, bringing us right down to age 60, the cost would be \$1.2758 billion.

I do not have the exact figure, but if we were to drop the eligibility age to 60 for the immediate current year in one swoop, I should think the cost would be in the area of \$1 billion or more.

Senator Argue: And if you were to drop the age to 60 for the spouse?

Mr. Cafik: On an annual increment basis for spouses only, the cost for the first year would be \$14.2 million; the second year, \$33.8 million; the third year \$50.2 million, the fourth year, \$68.4 million. The effect of adding spouses, if they are not in that age group normally entitled under the present act, for the whole five-year period, 1962 to 1965, would be \$86.3 million. (*See appendix "C"*)

The Deputy Chairman: Are there any further questions?

Senator Argue: If no other senator has a question, I should like to get some information respecting the supplements paid to pensioners in nursing homes. I have some figures which show that as of a recent date the comfort allowances vary. Manitoba seems to be the lowest, at \$14.21 a month for a socially active person, going up to a projected increase April 1 in Quebec of \$50 a month. What efforts, if any, have been made to persuade the provinces to provide a more adequate comfort allowance? What efforts, if any, have been made to persuade the provinces and others to pass on the increase provided for in this legislation?

It is a terrible thing that the very groups of pensioners who need this increase most—and I think that these people are the ones who need it most—may not, in many provinces, as things transpire, get a

penny extra as a result of this legislation. I have had these people come to me personally and I can tell you that they literally weep. They hear on the radio or television that the federal government is increasing the old age security pension or the guaranteed income supplement, and are elated at the thought of getting another \$10 a month; and then they find out that all the satisfaction they get is signing over to the authorities a cheque of a larger amount than the last one. What has your department been doing in this respect?

Mr. Cafik: That is a very important question, senator, and one that is of considerable concern to the department. It goes without saying that the establishment of the comfort allowance is within provincial jurisdiction; the provinces determine what the comfort allowance is to be. We would certainly like to see the benefit of this increase go directly to the old age pensioners, but in the case of those living in provincial institutions and being cared for in that way there does not appear to be anything we can do directly from a jurisdictional standpoint. The only means we have is by way of persuasion in our discussions with the provinces in the hope that they will respond in what we consider a responsible way to see that those pensioners in the homes get at least some benefit from the increase provided for in this legislation. This is a difficult and tough problem with which to deal.

I alluded earlier to an overall review of social policy which is to take place during Easter week. Two days are set aside for the provincial ministers of welfare and for the Minister of National Health and Welfare in order that they can discuss the whole problem of social security in Canada. At that time we will be looking not only into the problems of the elderly in this country in relationship to old age security and guaranteed income supplement, but also into such problems as family allowances and, hopefully, comfort allowances. In other words, we will be looking at the whole range of programs which are designed to help those in need.

I think it is important to underline that in a conference held with those same ministers a month or two ago the provinces asked us to make sure that we did not make any basic changes in the present old age security legislation without giving them an opportunity to put forward their views. The provinces have certain social priorities as well. They were very insistent that we make no basic structural changes in this plan until we have had an opportunity to sit down and hammer things out with them so that they could be sure that all of the social problems were given the right kind of priority.

Senator Argue: What kind of basic things might you be thinking about?

Mr. Cafik: In terms of the overall social policy review?

Senator Argue: Yes. You stated that the provinces did not wish you to make any basic changes in the structure of the Old Age Security Act. Can you give us an example of a change which might be considered a change in the basic structure?

Mr. Cafik: The things talked about publicly which gave rise to some concern on the part of the provinces were, for example, the lowering of the age to 60 or adding the spouses of those who are

now of pensionable age. They were concerned about these things because they might involve the expenditure of enormous amounts of federal resources and therefore limit the flexibility the federal government had in zeroing in on other social areas of high priority. They wanted to make sure that we did not make any basic adjustment in the plan itself until such time as both the federal and provincial authorities had had an opportunity to participate in a review.

Senator Argue: But their very spokesmen from the same parties in the House of Commons are advocating that you lower the age and that you make other changes. Have they double voices?

Mr. Cafik: I would not be the least bit surprised, but I do not intend to make any comment in respect of that. I think there is often a clear distinction between what is said at the provincial level and what is said at the federal level by those of the same party. I think that would apply regardless of the party in office.

Senator Argue: I should like to get your comment as a private member of Parliament rather than as a spokesman for the Cabinet. Senator Croll headed up a special committee of the Senate which brought in a report on poverty in Canada. On my cursory reading of that report, the suggestion was made that 30 per cent of income should be for non-basic expenditures. Do you think that is a reasonable figure to apply—and it is not being applied—to the old age security and the guaranteed income supplement that should be paid as a comfort allowance to persons in these nursing homes who are socially active, to use a phrase I have come across? That would be \$50 a month. Surely, that is not a lot of money? I do not think it should be lower than that.

Mr. Cafik: I do not want to prejudice that particular point. I do not know the basis used for the determination of the 30 per cent figure in the Croll report. I presume that one would have to have some understanding of what the basic income was from which you were projecting 30 per cent for these other purposes. I do not know if the 30 per cent figure is too high or too low in relationship to the combined OAS and GIS payments.

Senator Argue: It would be \$50 a month.

Mr. Cafik: Yes, I realize that. It may well be an adequate or a worthwhile figure; I am not trying to prejudice that. I do know that we are concerned that the comfort allowance set by the provinces in some way reflect some of these increases.

Senator Croll: Surely, the department has a view of its own as to what is a reasonable comfort allowance? The department has the personnel who have the experience and the knowledge in this area. Surely, you must have some view. If it is policy or embarrassing, then I will not press it.

Mr. Cafik: It is not the least bit embarrassing, except for the fact that I do not know the answer, and I suppose that might be considered embarrassing. I know of no figure that has been projected as an adequate comfort allowance. The federal government does not control the establishment of comfort allowances. I know of no one who has in fact on our level calculated one. I am

sure you have seen the comfort allowance province by province now, and there is considerable variation. There does not appear to be much justification for the variation, ranging from \$10 a month up to a projection of \$50 a month in the province of Quebec. That would clearly indicate there is an area that needs to be studied, and needs to be corrected.

Senator Martin: What is Ontario?

Mr. Cafik: In the province of Ontario the comfort allowance is \$25.

Senator McElman: Could you run through the list?

Mr. Cafik: By all means, senator. Newfoundland, \$20; Prince Edward Island, \$15; Nova Scotia, \$20; New Brunswick, \$15; Quebec is presently \$40, and I think it is going up to \$50; Ontario, \$25; Manitoba, \$14.21 for the socially active, I think, and for the socially inactive \$5; Saskatchewan \$15; Alberta \$30; British Columbia \$23.60; Yukon \$20; and Northwest Territories \$10.

Senator Bonnell: It would be my understanding that the comfort allowance would be more in line coming in under the Canada Assistance Act rather than the Old Age Security Act. Maybe in the Canada Assistance Act, when it is amended, a section could be put in to say that the provinces would be allowed to give a comfort allowance in those institutions up to \$50, and then it would not interfere with the sharing of the federal government under the Canada Assistance Act. I think the place to put in that type of suggestion would be under the Canada Assistance Act rather than the Old Age Security Act.

I do not know whether this is a fact or not, but it has been suggested that the GIS received is based on last year's income, so that somebody who filled in a form stating how much money they made last year would have their pension based on that this year. It is my understanding, whether correctly or not, that that is not necessarily always the case, that if somebody said they are going to retire this year and signed a statement to that effect, or filled that in blank, they would be entitled to forget the income they had last year and base their income on this year, and they could therefore get a full pension.

Miss O'Brien: This is quite right.

Mr. Cafik: That is quite right. If there is a projected retirement they can base it on no income as opposed to the preceding year. I agree with the suggestion that the comfort allowance really more properly belongs in the Canada Assistance Plan. The Canada Assistance Plan contributes half of the money under an arrangement with the provinces for any comfort allowances. The proposal that we in fact tie a string to the Canada Assistance Plan payment by saying a province must pay \$50 comfort allowance is not, I feel, at the moment in keeping with the spirit of the Canada Assistance Plan, where they initiate the programs and we contribute half the price. It is supposedly to allow for flexibility from province to province, to meet localized needs and circumstances.

Senator Croll: You pay these people on the same basis, whether they live in Newfoundland or elsewhere; \$170 comes to them if

they are eligible. How can you differentiate on the allowance as between one province and another? Surely, there may be some variation? But there it is; everybody gets the same allowance, no matter where they live. How can you differentiate between provinces in the comfort allowance?

Mr. Cafik: This may not be a very adequate answer, but the OAS-GIS is a federal program and goes to everyone; that is certain. The comfort allowance is not related to the OAS-GIS legislation; it is related to the Canada Assistance Plan legislation.

Senator Denis: There is nothing that forbids any province paying any amount of money to old age pensioners.

Mr. Cafik: That is correct, and we would pay half.

Senator Denis: They could decide to pay \$70 instead of \$50 or \$40, and all we have to do is pay half of it.

Mr. Cafik: That is correct, provided it is comfort allowance.

Senator Smith: Isn't this one of the very items the minister may be talking about when he visits the provinces? I know he has been in my province of Nova Scotia and in Newfoundland; I do not know how far he has travelled. Is this not a package he is looking at with the ministers, to see where the faults are, where we should correct it jointly, who shall have the responsibility? I have no objection to the thinking behind Senator Argue's proposal. I can see that it is very difficult for us to tell a province what they should do with the comfort allowance. They are the ones who should tell us whether they will permit us to share these things, and I take strong objection to our interfering with the provinces. I think we have done enough of that.

Mr. Cafik: I agree wholeheartedly that the purpose of the overall review is to correct all the anomalies that exist in the social structure in Canada, of which this is one. I would hope that the overall review would take this kind of thing into account. I know the minister, at the time the increase was originally proposed in the House of Commons, expressed considerable concern about whether this money would in fact be passed on, in what way and in what amount. I am sure that this matter will be discussed pretty thoroughly with the provinces.

Senator Fournier (De Lanaudière): A few moments ago you used the expression "socially active". I would like to know the exact meaning of that expression. If I translate it into French, "socialement actif", it does not mean much.

Mr. Cafik: It is not a term that is used by the federal government. As far as I know, it is used only by the Province of Manitoba, and they make a distinction between the socially active and the socially inactive in terms of comfort allowance figures.

Senator Argue: If you cannot get out of bed you are socially inactive.

Senator Fournier (De Lanaudière): What does "socially active" mean?

Mr. Cafik: I could only offer my own interpretation, and I am sure that yours would be every bit as valid as mine.

Senator Argue: Don't be too ambitious.

Senator Bonnell: And don't be too ambiguous.

Senator Fournier (De Lanaudière): At the beginning of the bill there must be a definition of terms.

Mr. Cafik: But this is not in our bill, because we are not dividing elderly people into socially inactive and socially active persons. The Province of Manitoba has made the distinction between one who is socially active and one who is socially inactive and, depending on the position one finds oneself in, according to their definition you get a comfort allowance of \$14.21 or \$5.

Senator Bonnell: Maybe it means if you are a socialist or not!

Senator Smith: You are not inactive if you chase the nurses around!

Senator Fournier (De Lanaudière): We do not know; we are in the dark.

Senator Cameron: In response to questions Mr. Cafik said that in the discussions so far with the provinces there had been no suggested figure of what a uniform social allowance might be. When we look at the variation between \$10 and \$50, this disparity between the provinces is one more piece of evidence of the chaos in this whole field. It seems to me that the sooner we get down to Senator Croll's guaranteed annual income the better, because this kind of thing cannot go on, no matter how you look at it. Are you not meeting later this month with the provinces?

Mr. Cafik: Yes, we are.

Senator Cameron: Have you any hope that you may come up with a uniform standard, and or a new approach? I realize how hard it is to get a uniform standard.

Mr. Cafik: Yes, that is the whole purpose of the review. The federal government has obligated itself to prepare alternative models of structures for doing away with a lot of the repetition and red tape, to make the welfare delivery system more accessible to people, and to make it less difficult to evolve a system that will be universal, we hope, with provincial overtones, so that the provinces might be able to make varying adjustments to suit their own particular needs. It will cover the whole broad range of guaranteed incomes—which, by the way, we already have in Canada, as you know, with the elderly.

The thrust from the Speech from the Throne will be adequately taken into account when talking about guaranteed incomes for those who cannot work, rather than having them get piecemeal any assistance they can. There is a whole broad range of things we are presently preparing for presentation to the provinces. The provinces themselves have been asked to prepare models of what they think would be acceptable as an overall approach to this question.

We have asked for one principle to be recognized, at least on a temporary basis, by the provinces and by the federal government, and that is that we should pay no attention, at least in our preliminary deliberations, to the question of jurisdiction, because we feel that would only impede the possibility of getting a good overall social security program. So, what we want is for everyone to come forward with what they think is the ideal solution; and once we have come down on one side or another on a series of these questions, later on we can begin to look at the jurisdictional problems, as to who will implement it, who will pay for it, how it will be cost-shared, et cetera.

I know that the minister and, I think, the provincial ministers are putting a great deal of stock in the forthcoming conference. To say that that would be resolved quickly would be rather naïve, because it is a major problem involving all the provinces.

Senator Cameron: It is obvious, with the varying programs being applied federally and provincially, that there is a tremendous "bureaucracy"—to use that term in quotes. Have you done anything to anticipate what would happen if the guaranteed annual income were put in and everybody—or even a select group—were to start now getting that income? How many civil servants would be displaced? It is very hard to say, and I have not seen any figures, but this has been kicked around for quite a while. You might put in a guaranteed income but still have the same number of people. It does not make sense.

Mr. Cafik: I think one would have to realize that the civil servants probably most affected by a change of that nature would in all probability be provincial—that is a personal view—because most of the implementation of a large number of these programs, such as welfare itself, is administered largely by the municipalities, and there are many people involved.

If one were to develop a program where local municipal welfare offices no longer had the pressure on them and the work load they have, if it were handled by some either province-wide or nation-wide scheme, it would probably eliminate much of the repetitive work on the lower level. But it does not appear to me, at least on the surface, that there would be very much difference as far as the federal government is concerned. It would depend on how the pie was cut and who accepted responsibility for doing each job in relation to the new program.

Senator Cameron: This is part of the background information that should be compiled; and this would be very useful, in order to put it in its proper perspective.

Mr. Cafik: Yes, this is an important point. It should constitute part of the consideration in building up models of various alternatives to solve the problems, to eliminate duplication and red tape.

Senator Croll: The American study on this, which you must have seen indicates they would cut the administrative cost in personnel by two-thirds. That is their study. Both their first and second studies have indicated that. Of course, that is one of the reasons why we are getting opposition from behind the table, in that a great

number of civil servants see their jobs going out the window and perhaps their getting some other kind of job.

Senator Denis: If I understand Senator Argue's point, it relates to those pensioners in homes for the aged or in institutions of that kind. There could be old age pensioners who are not in homes or that kind of institution. It would not be fair to give a comfort allowance to people who are in homes and not to give the same comfort allowance to those who are living outside and have to look after themselves. Is there not any other way that the provinces could look after them, for example, in regard to preventing an increase in rent? I think rent is the most expensive part of it all.

I have in my hand a bill passed in the Province of Quebec, assented to on February 28, 1973, an act to prevent excessive increases of rent in 1973.

Senator Argue: Hear, hear.

Senator Denis: I would like to know from the departmental officials if other provinces have similar legislation.

Mr. Cafik: If I could answer that first, it is that the department has publicly indicated, in cases where we have some control, in the CMHC-operated establishments, and so on, that we will not allow rents to be increased because of this increase in the old age security pension. There are other areas that are strictly under provincial jurisdiction. I know of the Quebec case, but I do not know of any other. Some of the officials may know something in respect to this. I have heard that in British Columbia, where there is a Landlord and Tenant Act, under it the landlord can increase rents only on the anniversary date of a lease, not before, and only once every 12 months—but that does not mean much to me.

Senator Denis: Not much.

Mr. Cafik: I do not know. Do the officials know of anything?

Miss O'Brien: No, sir.

Mr. Cafik: We know of none, senator.

Senator Denis: It would be a good thing for the next federal-provincial conference, that other provinces should know about it and recommend that such a step be taken. I have read, in the debates in the other place, that the minister said he had contacted the provinces to the effect that the increase in the old age pension should not be offset by a reduction in any other means or pensions received from the province. I think the minister said that. I would like you to say if that suggestion has been made to the provinces, regarding the increase we are giving now, not to deduct it from other sources—for instance, from assistance payments.

Mr. Cafik: Yes, senator. As far as I know, the department has communicated with all the provinces, to ask them to bear in mind that the primary purpose of this increase is to be helpful directly to old age pensioners, not to landlords, et cetera. We hope they will respond in a favourable way, to prohibit the confiscation of this money by other individuals.

Senator Bonnell: In regard to the figures that were given out by the provinces, I would like to say that I do not think these figures mean a thing. In Prince Edward Island you get your \$15, but you also get your tobacco and your clothes; you get your drugs, your hairdos, your shaving lotion; you get your razor blades and shoeshines—you get the works. In some other provinces you might get \$50, but you pay for your hairdos, your other services, your taxi service, your rental service, and the dollar bills do not mean a thing. Therefore, I do not want to leave the impression that in Prince Edward Island we would do anything to make the comfort of a senior citizen any less than it might be in the great province of Ontario.

Mr. Cafik: I can respond that what the senator has said is quite right. These figures are not really that related, that one could draw a quick conclusion from them that one province is doing less for senior citizens than another, simply on the basis of these figures. I appreciate his bringing that point forward.

Senator Bonnell: The other thing I would like to mention is that under the present legislation, as I understand it, the people who will be retiring this year for the first time and receiving a pension for the first time, will get an extra benefit over those in the past, besides the extra income, in that their Canada Pension allowance, which they will be getting this year, will not be taken into consideration until next year, so they will get an extra year's benefit over and above other senior citizens in the past.

Mr. Cafik: That is quite right, Mr. Chairman.

Senator Bonnell: There is another thing I would like to find out. Since under the unemployment insurance bill a person after 70 years of age is no longer eligible for unemployment insurance—or at 65, I do not know which it is . . .

Mr. Cafik: If I recall correctly, they can opt out of the labour force at 65 and it is compulsory to do so at 70.

Senator Bonnell: The unemployment insurance benefits are now considered income for old age security purposes and for the GIS calculation. Take the GIS calculation figures for a man who has reached age 70; he is now going to retire, he has bought stamps over the 20 or 30 years, but he cannot draw now. How much do they allow that man for income purposes under the GIS? Is the \$300 paid out and do they say, okay, he is going to get the \$300 from the retirement fund or the unemployment insurance, or whatever method is going to be worked out? How do you calculate income for the next year under employment insurance?

Mr. Cafik: If I understood your question correctly, senator, you want to know what happens with the lump sum payment, when you opt out of the labour force, from the Unemployment Insurance Commission, and whether it is considered as income in relationship to the amount of GIS one can draw. Is that the question?

Senator Bonnell: Yes. How much is it and how do you arrive at a lump sum, or does everybody get a different amount?

Miss O'Brien: The person who has just retired, senator, is estimating his current year's income, because last year's income

would not reflect his present status. He would have to count in that estimate of his income for the current year the amount of the lump sum he was to receive from unemployment insurance; but the next year, no longer being in receipt of unemployment insurance, he would not have to declare any.

Senator Bonnell: How can he figure out what his lump sum would be in that year from the unemployment insurance? Do the unemployment insurance people know in advance how much he is going to get?

Mr. Cafik: I haven't the facts in front of me, but the lump sum payment on opting out of the labour force is \$150, if I recall correctly.

Senator Bonnell: It is the same for everybody?

Mr. Cafik: That is my understanding.

Senator Bonnell: Regardless of how big or how small their stamps are?

Mr. Cafik: That is my understanding, but I would have to check that out. If you like, I can communicate the precise answer and confirm that, but I believe it is a \$150 lump sum payment.

Senator Bonnell: Thank you.

Senator McElman: Mr. Chairman, the witness has suggested that it would be desirable to have provincial agencies rather than have the input entirely municipal. I should like to point out that there is at least one province in which the municipalities are no longer involved. I am referring to New Brunswick. In my opinion, that is highly desirable and is a much more workable situation.

The question I am concerned with, Mr. Cafik, is whether you know if any of the provincial legislatures have indicated that they are going to pass on the increase to the recipients.

Mr. Cafik: I have no information as to the consequence of representations made by the minister to the provincial governments.

Senator McElman: But are you aware if any of the legislatures up to this point in time have made commitments?

Mr. Cafik: I am not aware of any commitments in respect to that.

Senator Croll: Mr. Chairman, Senator McElman mentioned that New Brunswick deals with it at the provincial level. I just want to point out that Prince Edward Island does too.

Senator Smith: The province of Nova Scotia is in the same position.

Mr. Cafik: I did not intend to prejudge the whole question of taking welfare out of the hands of the municipalities. We are not saying that that ought to be done. We are saying that in the overall review all of these things have to be considered so that

the provinces can come forward with suggestions on how best to manage these questions, and so can we. It may well be that that might be the result of it.

Senator Molgat: Mr. Cafik, I have the impression that the government of Manitoba has made it clear that they would not be increasing rents. Has the province, in fact, indicated that, do you know?

Mr. Cafik: I have heard that, but I know nothing to back it up.

Senator Molgat: There has been no communication back to the federal government?

Mr. Cafik: Not that I am aware of.

Senator Cameron: There was something in last night's paper to that effect.

Senator Molgat: I was under the impression that the province had indicated that.

Mr. Cafik: I have that impression, too, senator, but I do not know.

Senator Argue: The minister might have heard.

Mr. Cafik: The minister, of course, has been travelling. He may know, but, unfortunately, he is not here today.

Senator Molgat: My question is in regard to the comfort allowances in the various provinces. If the figures are not comparable, can the department give us the other factors involved? If it is not a comparable figure, can we establish some kind of comparison so that we know if the treatment is reasonably equal?

Mr. Cafik: We do not have that information with us, but we could research it and provide it to you.

Senator Molgat: Thank you.

Mr. Cafik: We will do our best, senator, to provide the committee with that information. [See Appendix "B"]

Senator Molgat: Thank you.

Senator Argue: Mr. Chairman, so far as Saskatchewan is concerned, my information is that the comfort allowance does not include hair cuts, razor blades, taxi fares, shoe shines and some other complicated things. It does not include the cost of a curling game; it does not include the cost of a cup of coffee downtown; it does not include the \$1 gift to a niece at Christmastime; it does not include the \$2 gift to the church that a person belongs to.

They may give some clothes—God bless them in Saskatchewan—over and above the \$15, but I want to make it clear, without commenting on any other province, that in Saskatchewan the comfort allowance is for a whole raft of things that I would say any

Canadian citizen should have a right to obtain and should have a right to do, like giving a small gift to a relative or making a small donation to the church, or taking a friend out for a cup of coffee and a piece of pie. These things cannot be done in Saskatchewan and I think it is a disgrace that they cannot be done, and that is why I have been campaigning for this.

Now, it was suggested earlier that if you want to deal with comfort allowances amendments will have to be made to the Canada Assistance Plan. In my opinion, the Canada Assistance Plan already provides for comfort allowances. If the province increases the comfort allowance, Ottawa, out of its generosity and its foresight, comes through with half the money. So you do not have to amend the Canada Assistance Plan to provide for comfort allowances. It is already there. The only stumbling block to comfort allowances is that the provinces steal the increases in the old age security. That is exactly what they do. And I put it to the witness that what is happening is that, with respect to this increase of \$17 a month, in some provinces they are going to save an equivalent amount under the Canada Assistance Plan and the provincial treasuries are going to pocket \$8.50. That is the danger in this whole thing.

Sure, some of the homes will come in and take the money, but the provincial treasuries will hold their hands out too, and they can take \$8.50 which I suggest to you the people of Canada in fact intend to go the old age pensioners.

I do not think the people of this country, supporting the passage of this bill unanimously in our Canadian House of Commons and unanimously in the Senate, believe that the provinces should have the right to get in and take half of it.

I would appreciate your response to that. I am not saying they cannot take half, but I am saying that Parliament does not want them to take half.

Mr. Cafik: I would certainly agree that it is often difficult to judge the will of Parliament, but taking the risk of going on to that kind of thin ice, I know that when I voted for that bill as an individual I certainly did not intend to subsidize any province.

Senator Argue: Well, I am no constitutional lawyer; in fact, I am not a lawyer at all: I am just a backwoods farmer. I got a little land cleared and what doesn't have woods on it has rocks. Nevertheless, I think that the federal government has the right to say that since it is paying the old age security pension it can stipulate how this money can be divided, since it is federal money being paid to a Canadian citizen. Any consequence of the federal government's saying how the money could be divided is an ancillary consequence; it is something that happens outside of this particular thing. So I would argue that we have the jurisdiction to say how the old age pension, paid solely from Ottawa under this legislation, may be divided.

Now, I have had competent advice on this particular issue—and I realize that one may at times get competent advice on various issues that in itself may vary—but I believe that my competent advice is among the most competent advice available, and so I understand that this, apart from its merits, which in my view are excellent, is within the right of Parliament to do.

The suggested amendment—and here I just put it forward for information without moving it—is as follows:

Bill C-147 is amended by adding thereto the following, as clause 4:

4. Immediately after section 10 of the said Act insert the following heading and section:

“Comfort Allowance 10A. (1) in this section,

“supervisory care” means a level of care required by a pensioner who needs room, board and laundry service and who, because of frailty due to normal aging, or to minor physical or mental disability, requires some supervision in the activities of daily living; and

“limited personal care” means a level of care required by a pensioner who is slowing down in his physical or mental faculties and therefore requires continuing supervision and some assistance with the activities of daily living.

These words have been borrowed from the report of the federal task force on this subject and that is where the definition comes from. But these definitions are only suggested so that the meat of it could apply. Then we have:

(2) A pensioner, single or married, who is resident in a home for the aged or other such institution and who is receiving supervisory care or limited personal care, and who is in receipt of the whole or any part of the supplement, shall retain for his personal use a comfort allowance of not less than thirty percent of the total of his pension plus the full supplement to which he is entitled.”

This would mean a maximum supplement or a maximum comfort allowance of \$51. I suggest to you that it is within the jurisdiction of Parliament to consider this, and I suggest to you that it is eminently fair and is something we certainly should consider.

The Deputy Chairman: I would like to make it abundantly clear for the record, Senator Argue, that you are putting this forward as a suggestion at this stage and not as a formal motion.

Senator Argue: Not at this point.

Mr. Cafik: Personally I am very sympathetic to the spirit of what you are trying to do in respect to this suggestion, but in my view it poses certain difficulties.

First of all, comfort allowances, as I have indicated previously, do not find themselves in the bill, and certainly there is no suggestion of comfort allowances in the amendments to the bill which we presently have in front of us. For that reason I do not know whether I should be allowed to discuss these things, and I am somewhat nervous in dealing with this kind of thing. However, it seems to me that the suggestion is outside the framework of the limited amendments we have in front of us, and I would have certain reservations as to its acceptability from that standpoint. But, of course, the committee can deal with that.

Secondly, I pointed out that comfort allowances are a provincial matter—the provinces establish them, and we pay half of the cost

under the Canada Assistance Plan—and therefore it would seem to me—and I do not want to get myself in trouble here—that the spirit of the thing you are trying to do is to take the increases in the Old Age Security Act and to deem them as non-income for any other calculations. It seems to me that that is really what you are talking about, because at the present time they are income and are taken in for payment of room and board, and so on, in whatever provincial institutions might be involved, rather than declaring something about comfort allowances which are outside the terms of this. That is one point.

Thirdly, I would argue that if you are to talk about a comfort allowance in the specific kind of way in which you are talking, then you are really talking about a money matter, a ways and means matter, that would involve additional expenditures by Parliament because we are committed under the Canada Pension Plan to pay part of any comfort allowance. But that is subject to some debate.

Senator Argue: This is the division I would suggest with respect to something that is being paid. This would not cost five cents, in my opinion, under this legislation. It is merely dividing what you are going to pay anyway, or merely attaching some particulars to a part of it.

Senator Smith: Just for the record, Mr. Chairman, I am sure that Mr. Cafik meant to cite the Canada Assistance Plan and not the pension plan.

Mr. Cafik: I am sorry, that is right.

Senator Croll: The very important amendment we made to the Canada Assistance Act when we went over it in 1966 was to insert the word “need”, so that whatever need there is has to be met—whatever that may mean. But that is not the object of what I have to say at the moment.

First of all, might I ask Mr. Cafik if he could in some way, between now and tomorrow or the next day, indicate to the minister, who is out in the country, that here in the Senate—and perhaps this is because we are a little closer to the aged people than some of the others are—we are very seriously concerned about this matter and we would like it to be a matter of priority for him to discuss?

Mr. Cafik: I will undertake to do that, senator.

Senator Croll: Is there any way that you can provide for us a record of what is paid by each province to the nursing homes under the Hospitalization Act—which of the provinces have accepted nursing homes as part of the Hospitalization Act and the amount they are paid?

I realize you may not have this at your fingertips, but could you provide that to the chairman in the next day or two, so that it can go into the record?

[See appendix “A”]

Mr. Cafik: We will do that. We do not have the information at our fingertips, but we will do that.

Senator Croll: There are two questions in there: what the provinces provide and how much they pay.

The Deputy Chairman: Is it agreed that this information, when provided, form part of the record?

Hon. Senators: Agreed.

Senator Croll: One other point. Under the War Veterans Act—and I may stand correction here—we do make provision for a younger spouse. That is a matter of principle, and having recognized it for the War Veterans Act, all we are suggesting now is that, since the principle has been recognized, it might very well be applied here.

Mr. Cafik: You are talking about spouses who are not pensionable becoming pensionable by virtue of the fact that their spouse is pensionable?

Senator Croll: That is right.

Mr. Cafik: Just to clarify the matter, do you mean that this would apply to certain age limits, such as 60 to 65, or 55 to 65, or would it be right down the scale—anyone who is married to a pensioner?

Senator Croll: I think that in dealing with war veterans it provided for anyone, did it not? We dealt with that problem after the war when veterans were marrying young women and we had a serious problem.

The Deputy Chairman: There is no age limit with regard to the war veterans allowance, except for widows at age 55.

Mr. Cafik: I think there is quite a distinction between these two situations. If we make it universal, regardless of age, I think it is conceivable there could be some abuses. One does not have to stretch his imagination very much to know how this could occur. There could be a motive for doing this; and it may not be very responsible for the government to come forward with this legislation without having some kind of age limit.

The provinces, in previous negotiations with the minister, have discussed this whole question with regard to spouses and what should be done, as well as to whether the age limit should be reduced to 60. They have asked us to await further deliberations with them before making any decisions.

Senator Fournier (De Lanaudière): If we follow Senator Argue's reasoning, we will enter the field of provincial jurisdiction in social matters. A province can appeal to the Supreme Court of Canada for a decision such as an *ultra vires* decision, if that is the case. So everything will begin all over again because it will be defeated by the Supreme Court.

So, since it is within the jurisdiction of the provinces, I would suggest that someone suggest to the provinces at their next meeting that they come together at some level in order to avoid discrimination. It is nonsense that in one province a person receives \$10 and that another receives \$40. So I would ask the provinces to

come to a common decision and have the same amount for all Canadians, and then we will pay half of it. I am not prepared to expose myself to being defeated by the Supreme Court of Canada on this matter. So I will vote against this.

Mr. Cafik: Basically, I think I agree with you, although I cannot make a legal judgment. It seems to me that we are endeavouring to put some pressure on the provinces and then to leave it as their responsibility.

Senator Denis: This relates to other matters as well, such as the handicapped and deserted mothers; other people in need are in the same situation. So, if we do this for the old age pensioner and we do not do it for the disabled and handicapped it could be discrimination. As you said, it has to be studied as a global measure at the next conference.

Senator Croll talked about younger spouses having no pension. Spouses are no different from bachelors or spinsters who are 64 years of age; they are going to receive the minimum, and that is all. We would have to add spinsters and bachelors as well as younger spouses.

Mr. Cafik: There is one point I wish to make in relation to your first comment, and I intended to say this in response to Senator Argue. Inasmuch as I am personally sympathetic, and I think the department is sympathetic, with respect to the comfort allowance problem, I would like to point out something that may be useful to you. A person within a provincial institution who receives a comfort allowance has some amount of money that might be called disposable income for non-essentials. For those who are on old age security and GIS, who are living in their own little apartment and who are not in institutions, I do not know that anybody has determined what amount of disposable income they have available to them. They came forward with \$50 disposable income for personal comfort for someone within an institution. I think you might find that the person who is not in an institution does not fare as well. We have not looked into this matter, but I think we have to look at that relationship as well.

Senator Argue: I would argue for board and room. You can do this for \$120 a month, although I understand it depends where you are living. I was intrigued by your suggestion, and I wish you would define this more clearly so I can understand it. Your definition was that this increase would not be considered income for the purpose of something else, is that correct?

Mr. Cafik: That is a personal view.

Senator Argue: Would you give it to me again? I will not do anything with it; I am just curious.

Mr. Cafik: The only view I have with respect to this, and I do not say it is the right thing to do, but in terms of this particular act—and I have thought about this on numerous occasions—is that it seems to me that if there is an increase of \$18 a month, or whatever the figure may be, it is not deemed as income for any other calculation. That is with respect to rental increases or whatever; you do not have that to pay for it.

Senator Argue: In your interest as a private member, or in your private research outside the government, this kind of thing could be done if it were the desired thing to do.

Mr. Cafik: I am not saying it would be acceptable in constitutional or parliamentary terms, but it seems to me that it is at least addressing itself precisely to the point of the bill.

Senator McElman: I think I support the purpose of Senator Argue's point. It is a matter of mechanics as to how one arrives at the end result. I am sure this would be passed on to the minister, and if he knows that the feeling of the other house and the feeling of this committee is strongly in favour of negotiations with the provinces, in which course he is now involved, this is the chief purpose of the argument put forward by Senator Argue. In federal-provincial negotiations, sticks are not commonly used and I do not suggest that they should be. But for whatever value a comparison of figures might have as between the provinces, I think the minister should bear in mind that provinces which are at the lower scale are those very provinces which are receiving, under the federal-provincial taxation agreement, rather substantial sums of money, which have just been increased.

Going back a few years, the basic purpose of the change from federal authority to provincial authority with regard to grants and equalization payments was that this would provide an acceptable—and I stress the word “acceptable”—basic, minimum standard for every Canadian, irrespective of where they might live within the nation. It seems to me that to achieve this purpose the minister has a very strong hand in future negotiations, and I hope that the witness will stress this a little with the minister during his discussions as a consequence of this committee meeting.

Mr. Cafik: I am certainly fully cognizant of the depth of feeling and concern on the part of senators with respect to comforts and the amount of disposable income which recipients should retain as a result of these increases. This concern is shared in the other place and will be underscored with the minister as a result of this meeting.

In connection with the second point, which in effect underlines the powers we might have with respect to these negotiations with the provinces, I would simply say that from a strategic standpoint at the moment the federal government has appealed to the provinces to consider this matter in a completely open manner, without jurisdictional arguments, pressures and getting out the big stick, in the hope that we will maximize the potential effects to all Canadians. So it seems to me that your argument is well taken, but that at this particular juncture in these negotiations it would be an improper approach. We might well achieve more by proceeding in the fashion we are presently proposing, but it is an ultimate consideration which will have to be taken into account. There will clearly be a time when provincial governments and the federal government will harden their positions in some respects and there will be points of disagreement. We should therefore bear in mind the comments you put forward.

Senator McElman: I simply want the actual basis of provincial-federal grants to be kept in mind.

Mr. Cafik: I think that is the basis for it.

Senator McElman: Yes, acceptable minimum standards.

Senator Smith: Returning for a moment to the matter of spouses, I seem to run into rather nasty situations. I think of a man eligible for OAS and GIS, with a wife four or five years younger than himself. This is a case of hardship, of which we are all conscious. I realize also that the ultimate solution is the recommendation of the Senate committee under Senator Croll. Some day we will have a guaranteed income.

I wonder if there is not a better method of taking a small crack at this problem, rather than spending a great amount of money by making spouses eligible for OAS at almost any age, or even at 60 or 62 years of age. Is there not a method which would give consideration to providing that spouses receive an amount equal to the GIS supplement which they would in other circumstances receive if they were of the age of eligibility for OAS?

Could we obtain a figure which would indicate the cost of dealing with it in that fashion? It is not a very large item in comparison to the calculations. We are bothered by such cases as these. I am sure that more complaints are received by members of the House of Commons than by senators. Could you provide a figure for our record as soon as possible in connection with the cost of that approach?

Mr. Cafik: I am not entirely sure that I have a clear picture of what you have in mind. Are you only referring to GIS, as opposed to OAS?

Senator Smith: Yes.

Mr. Cafik: No, but one could presume that it would be considerably less than \$86 million. We could calculate some details and provide them to the committee simply on a GIS figure.

Senator Smith: Yes, I really think there should also be an age limit.

Mr. Cafik: It is extremely difficult because in calculating the cost of GIS we have to know the incomes and age groups of those involved.

Senator Smith: Could you let us have a rough figure?

Mr. Cafik: We could give you an extremely rounded figure, which I believe would be approximately \$25 million or \$30 million.

Senator Denis: The figure I have for spouses between the ages of 60 and 65 years is \$280 million.

Senator Smith: Excuse me; I was not referring to OAS, but only GIS.

Senator Denis: The OAS figure is \$100 and the GIS is \$70.

Senator Smith: It is a varying figure.

Senator Denis: It is seven-tenths.

Senator Smith: Not necessarily. It is a varying figure, according to the amount of the other income.

Mr. Cafik: The Speech from the Throne indicates that the government is committed to providing a guaranteed annual income to those who cannot work. It is pretty clear that there are many spouses in the age group between 60 and 65 years, or maybe even younger, who are not able to work. They may not have work experience or may not have been attached to the work force for a period of time. It seems to me that in our overall social review they would probably qualify for such a guaranteed annual income, which would eliminate the need for the consideration with which you are concerned at the moment.

Senator Smith: I am sure it would.

Senator Croll: Mr. Chairman, if I may tell Mr. Cafik something of which I am sure he is already aware, the Government of British Columbia, in an act announced yesterday, indicated they are making provision for the working poor. The example that appeared in this morning's *Globe and Mail* was a family on welfare receiving \$350 and a similar family with its head working and receiving \$320. The bill provides for making up the difference. So this is already being introduced by slow degrees by the provinces, which is the one thing we do not want.

Mr. Cafik: This is always the risk taken by the federal government in our system when provinces are brought into its confidence. All these matters are discussed and they are asked to come forward with positions they would propose for a national scheme. This, in effect, gives them an incentive to work on this, the risk being that they will come up with a good idea and jump the gun. It is a political situation.

Senator Croll: I protected you yesterday when speaking. I quoted your speech in the House of Commons and particularly in connection with that point, so I made sure the federal government was involved.

Mr. Cafik: Thank you very much, senator.

Senator Denis: I wish to correct my statement with regard to the amounts paid. I had in mind \$150, but I think it is a different figure for the cost of spouse between 60 and 65 years of age. I think the departmental officials have the correct figure for the cost of GIS.

Mr. Cafik: We have already presented the figures, but we have not made the distinction between GIS and OAS.

Senator Argue: If they are available, perhaps they could also be provided.

Senator Bonnell: Mr. Chairman, I would like to say a few words as far as comfort allowance is concerned. I agree with Senator Argue that it would be wonderful if we could arrange it. In my view, however, there are only so many dollars available for the welfare of

Canadians. We must consider the overall welfare problem, and I can think of many who are in much greater need than those in homes who receive all necessary care and perhaps have \$15 over for a donation to the church on Sunday and so forth. Some on welfare do not have sufficient food. Perhaps family allowances should be raised so as to provide for the children of large families. Consideration should be given from time to time to all priorities in the allocation of funds in connection with welfare schemes.

One of the things we should be thinking about in such provinces as Prince Edward Island, Newfoundland, Manitoba, Nova Scotia and New Brunswick, is that we should not try to put out legislation and tell them that they have to pay out something when they have not got it themselves. It seems not just the right thing to be doing in the federal jurisdiction. Maybe what we could do in the federal jurisdiction is pay a greater percentage of the Canada Assistance Program. Instead of paying 50 per cent, maybe we could say, "Look, let us do the same kind of thing that we are doing in connection with equalization payments. In provinces that have a greater need, we will pay a greater percentage of the payment towards the welfare program." So, Newfoundland, instead of paying 50 per cent, might pay as high as 65 per cent. Perhaps Prince Edward Island, where they pay 70 per cent of hospital insurance, would pay 70 per cent of welfare. In this way these provinces would participate with the larger provinces, and perhaps all Canadians, wherever they live, would have equal rights and benefits, because the federal treasury would see that no one living in isolation received less than the same benefits as those living in other parts of the country.

Therefore, I would suggest, Mr. Chairman, that the minister might think about raising the percentages to those provinces in need in connection with the Canada Assistance Program. If a senior citizen needs extra help, he could get it from the Canada Assistance Program, and the federal government should participate 50, 75 or 80 per cent, as the need might be.

I would like to think that the sponsor will bring this to the attention of his minister, and suggests to him that at the next federal-provincial conference of ministers of welfare, he should have an open mind with a view to assisting those provinces requiring extra finance, and who wish to give equal rights to citizens, whether young or old, in all parts of this country.

Senator Croll: Hear, hear.

If there are no further questions, I move the adoption of the bill.

Senator Argue: I have one more question to ask.

The Deputy Chairman: I too have one question to ask of the witness.

Has any projection been made of what it would cost if other provinces followed the procedure adopted by British Columbia of raising the pension to \$200?

Mr. Cafik: We have figures for a pension of \$150, but not for one of \$200. However, I think we can provide that figure for the committee.

Senator Argue: Do we have to obtain royal assent this week? When do the cheques go out?

Mr. Cafik: It is important to the department, and to the Department of Supply and Services who have the responsibility for distributing these cheques, that we have royal assent as soon as possible. The mechanism is in place and work is going ahead on the presumption that the bill will be passed. Nothing can, in fact, be issued until royal assent is given. We are hopeful that if royal assent is received today we can ensure that all cheques are sent out for the current month.

Senator Argue: When are they normally dropped in the mail?

Miss O'Brien: They are put in the mail for delivery on the third-last banking day of each month, but they have to go to the post office several days before that for sorting.

The Deputy Chairman: Is the committee ready for the motion that we report the bill without amendment?

Hon. Senators: Agreed.

Senator Croll: On behalf of the committee, may I thank Mr. Cafik for the very fine presentation he has made here this morning?

Hon. Senators: Hear, hear.

The Committee adjourned.

April 5, 1973

Health, Welfare and Science

3 : 19

Parliamentary Secretary to
The Minister of National
Health and Welfare

April 6, 1973

TO: Clerk, Standing Senate Committee on Health, Welfare and
Science.

FROM: N. A. Cafik

RE: *Standing Senate Committee on Health, Welfare and Science*

At yesterday's meeting of the Standing Senate Committee on
Health, Welfare and Science, I undertook the following:

a. to provide the Committee, for the record, with a
statement concerning provincial payments under the Hos-
pitalization Act;

b. to attempt to provide the Committee with information
concerning the value of Comforts Allowances and Comforts
in kind in the Provinces;

A statement covering this is attached at Appendix B.

c. To confirm my rough estimate of \$25 to \$30 million for
payments to OAS spouses.

The statement confirming the figure at about \$32.4 million is
at Appendix C.

N.A. Cafik, M.P.,
Parliamentary Secretary to
The Minister of National
Health and Welfare.

APPENDIX "A"

Payments to Nursing Homes under
the Hospitalization Act

The following information is provided with respect to Senator Croll's request for a record of what is being paid by each province to nursing homes under the Hospitalization Act.

Two provinces (Alberta and Ontario) have introduced programs under which the cost of nursing home care to eligible residents is being defrayed in part through payments made under the provincial hospital insurance scheme. Three other provinces (B.C., Saskatchewan and Manitoba) have made recent policy announcements concerning the introduction of similar programs in those provinces.

Alberta Nursing Homes Act (1964)

This plan which is administered by the Alberta Hospital Services Commission provides that an eligible patient in an approved nursing home need only pay \$3.00 per day as a co-insurance payment for the cost of care. The balance, currently \$7.00 per day, is paid by the Hospital Services Commission.

The main conditions for receiving this benefit are that the resident:

- a. Requires nursing care in accordance with established medical criteria.
- b. Has resided in Alberta for the past three years.
- c. Pays the required co-insurance payment of \$3.00 per day.

Ontario Extended Care Benefits (1972)

Ontario introduced a plan in April 1972 which operates along lines similar to the Alberta Plan but with some administrative variations. Benefits are available not only in licensed participating nursing homes but in extended care units in municipal homes for the aged and charitable institutions.

Eligible residents are required to pay only \$3.50 per day and the balance, currently \$9.00, is paid by the province. With respect to licensed nursing homes this payment is administered by the Ontario Health Insurance Plan.

The main conditions of eligibility are that the resident:

- a. Meets the medical requirements for extended care.
- b. Has resided in Ontario for at least twelve months prior to admission.
- c. Is a member in good standing of Ontario Health Insurance Program.
- d. Pays the required co-payment of \$3.50 per day.

A common feature of the two programs is the limitation of costs to the individual resident.

APPENDIX "B"

Comforts Allowances and Related Benefits

With respect to Senator Molgat's question concerning comforts allowances and related benefits, there are marked variations from province to province and also within different classes of institutions in any particular province.

Prior to the federal cost-sharing agreements the provision of comforts allowances was not a matter of provincial policy in most provinces. It was left largely to the discretion of the individual homes whether personal comforts were to be provided in cash or in kind. Uniform practices have tended to develop initially in homes which are being operated directly by provincial or municipal authorities. Subsequently there has been a gradual extension of such policies to homes which are operated privately or by charitable organizations.

Because of the almost infinite variety of situations, it would be almost impossible to provide the kind of comparative statement envisaged. As a general observation it can be said that the trend towards increasing cash comforts allowances has been accompanied by a tendency to decrease the provision of comforts in kind. To the extent that residents are able to pay for their own cosmetics, newspapers, carfare, etc., the home administration is less obliged to provide such items.

APPENDIX "C"

Estimated Cost of Payment of GIS to
Spouses (between ages 60 and 65)
of OAS Pensioners in Receipt of GIS

Estimated number of GIS pensioners	
with spouses aged 60 to 65	50,000
Average monthly payment of GIS to present GIS recipients	\$ 54.00
Average yearly payment (\$54 x 12)	\$648.00
Estimated cost (\$648 x 50,000)	\$ 32.4 million



FIRST SESSION—TWENTY-NINTH PARLIAMENT
1973

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING SENATE COMMITTEE ON
**HEALTH, WELFARE
AND SCIENCE**

The Honourable CHESLEY W. CARTER, *Deputy Chairman*

Issue No. 4

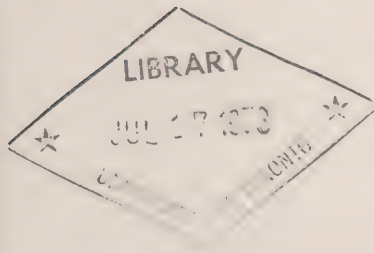
WEDNESDAY, JUNE 20, 1973

Complete Proceedings on Bill C-133

"An Act to amend the National Housing Act"

REPORT OF THE COMMITTEE

(Witnesses and Appendices—See Minutes of Proceedings)



THE STANDING SENATE COMMITTEE ON
HEALTH, WELFARE AND SCIENCE

The Honourable Maurice Lamontagne, P.C.,
Chairman

The Honourable Chesley W. Carter, Deputy Chair-
man *and*

The Honourable Senators:

Argue	Fournier
Blois	Goldenberg
Bonnell	Hastings
Bourget	Inman
Cameron	Langlois
Croll	*Martin
Denis	McGrand
*Flynn	Phillips
Fournier	Smith
(Lanaudière)	Sullivan
Fournier	Thompson
(Madawaska	van Roggen
Restigouche)	

**Ex officio Members*
20 MEMBERS

(Quorum 5)

Order of Reference

Extract from the Minutes of Proceedings of the Senate,
Tuesday, June 19, 1973:

"The Order of the Day being read,
With leave of the Senate,

The Honourable Senator Bélisle resumed the debate
on the motion of the Honourable Senator Bourget,
P.C., seconded by the Honourable Senator Denis,
P.C., for the second reading of the Bill C-133,
intituled: "An Act to amend the National Housing
Act".

After debate, and—

The question being put on the motion it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Bourget, P.C., moved,
seconded by the Honourable Senator Denis, P.C., that
the Bill be referred to the Standing Senate Committee
on Health, Welfare and Science.

The question being put on the motion, it was—
Resolved in the affirmative."

Robert Fortier
Clerk of the Senate

Minutes of Proceedings

Wednesday, June 20, 1973

(4)

Pursuant to adjournment and notice, the Standing Senate Committee on Health, Welfare and Science met this day at 2:30 p.m.

Present: The Honourable Senators Carter (Deputy Chairman), Bonnell, Bourget, Denis, Fournier (*Madawaska-Restigouche*), Inman, Langlois, Phillips, Smith. (9)

Present but not of the Committee: The Honourable Senators Heath, McElman, Walker (3).

The Committee proceeded to the consideration of Bill C-133, "An Act to amend the National Housing Act."

The following witness was heard in explanation of the Bill:

Central Mortgage and Housing Corporation:
Mr. H. W. Hignett, President

During the discussion that followed, Mr. Hignett quoted figures from several documents he had in his possession. At the request of the Deputy Chairman, it was *Agreed* that two documents entitled: "Budget for Commitments under the New Legislation" and "1973 Capital Budget—Commitments" (Tables I and II), would be printed as appendices to today's proceedings. (See Appendices A, B and C.)

On motion of the Honourable Senator Bourget, it was *Resolved* to report the said Bill without amendment.

At 4:03 p.m., the Committee adjourned to the call of the Chair.

ATTEST:

Patrick J. Savoie
Clerk of the Committee

Report of the Committee

Wednesday, June 20, 1973.

The Standing Senate Committee on Health, Welfare and Science to which was referred Bill C-133, intituled: "An Act to amend the National Housing Act," has in obedience to the order of reference of June 19, 1973, examined the said Bill and now reports the same without amendment.

Respectfully submitted.

Chesley W. Carter,
Deputy Chairman.

The Standing Senate Committee on Health, Welfare and Science

Evidence

Ottawa, Wednesday, June 20, 1973.

The Standing Senate Committee on Health, Welfare and Science, to which was referred Bill C-133, to amend the National Housing Act, met this day at 2.30 p.m. to give consideration to the bill.

Senator Chesley W. Carter (*Deputy Chairman*) in the Chair.

The Deputy Chairman: Honourable senators, we have a quorum and before us is bill C-133. Mr. Hignett, President of CMHC, and certain of his colleagues are present as witnesses. I will ask Mr. Hignett to introduce the other officials and proceed with any opening statement he may care to make.

Mr. H. W. Hignett, President, Central Mortgage and Housing Corporation: Thank you, Mr. Chairman. If I may, I will introduce my colleagues from Central Mortgage and Housing Corporation who are with me. In the corner is Mr. R. T. Adamson, Executive Director of the corporation; sitting next to him, Mr. W. Wheatley, Assistant Director of our Secretariat; Mr. Marcel Sigouin, Executive Director in charge of Real Estate; Mr. Stewart Bourns, a member of our Policy Planning Division; Mr. John MacFarlane, a member of the Secretariat; and Mr. Ted Johnson, the Executive Assistant to the Honourable Ron Basford.

The bill you are considering is, in my opinion, the most important amendment to the National Housing Act of the last decade. It is intended to bring closer the goal of the Honourable Ron Basford of giving Canadians a right to good housing in a proper environment and in invigorating communities.

The bill was first introduced in the House of Commons more than one year ago. Since its introduction there have been at least two rounds of close consultation with each of the 10 provinces by both the minister and officials of Central Mortgage and Housing Corporation. These rounds of consultation led to improvements in the bill, and in this respect the bill that was submitted last January was an improved bill over the previous one. The bill was also considered and agreed upon at the federal-provincial meeting of ministers which took place in January of this year.

There has been a great deal of public discussion with respect to the bill. We have received representations from the housing industry, social agencies such as the Social Development Council, co-operative associations, other citizen's groups and individual citizens. All these led to further consideration of the bill and further amendments, both in committee and at third reading stage in the house.

The purpose of the legislation is to strengthen in many respects the housing aids for lower income families in Canada.

It seems to me, Mr. Chairman that no piece of legislation, at least relating to housing, has been better understood by provincial governments, municipalities and interested groups in all parts of the country than this bill. Its passage into law is eagerly anticipated by most.

The bill contains eight major programs, some of which are new and some of which are very substantial strengthening of existing programs. Four programs are perhaps not as important as the others, but are important in themselves. Finally, there are housekeeping amendments to the act, without which CMHC could not continue.

Dealing with the eight major programs in the act, not in the order of their importance but in the order of their appearance in the bill, the first is section 15.1 loans to non-profit corporations. Non-profit corporations have traditionally in Canada provided the bulk of housing for elderly persons and for low-income families. The non-profit section of the act has been widened to make it absolutely clear that non-profit corporations sponsored by charitable organizations, co-operative associations and municipalities qualify for assistance under this section. The section provides for loans of 100 per cent, which is the first time that 100 per cent loans have appeared in any section of the National Housing Act. It provides also for a grant of 10 per cent of the cost of the project upon its completion.

The second program is contained in section 27.1, the neighbourhood improvement program, which replaces the urban renewal program. The implementation of the urban renewal program resulted in the demolition of neighbourhoods and disruption of low-income families. Successive ministers and, indeed, members of both houses, felt that the program has been in many respects harmful, notwithstanding the good that it was intended to do. The neighbourhood improvement program replaces this. The essence of this program is to preserve neighbourhoods rather than destroy them and provides loans and a substantial level in grants for the acquisition of land for low-income housing. It also provides for grants for a construction of social amenities appropriate to neighbourhoods. A lesser level of grants is available for the provision of municipal services and the acquisition of land to be used for other purposes.

Part IV.1 of the act introduces for the first time loans and grants for the rehabilitation and conversion of existing housing. This program, initially at least, is closely associated with the neighbourhood improvement program. It provides that in addition to the aids available for

neighbourhood improvement, loans and grants will be available to homeowners within the neighbourhood for the repair and rehabilitation of their houses. Part of the reason that the rehabilitation section has been closely associated with the neighbourhood improvement program is the fact that a well-developed repair and rehabilitation industry does not exist in this country. There are no well-developed local by-laws for maintenance and occupancy, except in a few places. Nevertheless, the section is broadened so that, subject to federal-provincial agreement, the loans and grants for rehabilitation will be available in parts of cities, or in rural areas where neighbourhood improvement activities are not considered necessary or desirable by the municipality and province concerned.

Part IV.2 introduces assisted home ownership. This will not replace the public housing program, which will continue. It is intended to provide a wider range of choices to lower income families in search of housing. It is geared to income and provides for grants to individuals to assist them in making monthly payments of principal, interest and taxes. It is thought that in the low-cost areas of the country—that is, the small communities and some of the smaller cities—an assisted home ownership program will aid those with family incomes between \$5,500 and \$7,500 per annum. In the larger cities and the high-cost areas it will assist those with family incomes in the order of \$7,500 to \$9,000.

Section 34.18 deals with co-operative housing. This is the first time that a section of the National Housing Act has been devoted specifically to co-operatives. The purpose is to make it clear that co-operatives enjoy all the provisions of the National Housing Act, including the loan insurance sections and those relating to the activities of non-profit corporations, assisted home ownership and the rehabilitation of existing housing.

Clause 13 of the bill deals with experimental developmental projects undertaken by CMHC. This introduces the notion that CMHC should be authorized to assure part of the risk in highly innovative projects and those which might lead to important innovations in housing. The corporation is authorized to join with other governments, either provincial or municipal, or with industry in sharing the cost of innovative housing projects.

Section 42 of the act deals with land assembly, for which the loan arrangement in the National Housing Act expired a year ago last March. This is intended to improve and replace it. It improves it by widening the purposes for which land assembly loans can be made. The previous provision limited it to general housing purposes. The new program relates land assembly to general housing purposes and all uses incidental thereto. The loan arrangements are widened and the amortization period is lengthened to 25 years for land sold in fee simple and to 50 years for land leased.

The last of the new programs is the new communities program, which is intended for planned development of urban growth in Canadian cities in accordance with provincial growth strategy. It provides for a modest level of grants for the planning of new communities and for the acquisition of land for social amenities.

Other programs are introduced into the act. Section 8.1 of the act has been amended to extend the protection of the Mortgage Insurance Fund to homeowners who, by reason of failure of the builder to complete the house for

any reason, bankruptcy or otherwise, would be penalized. The Mortgage Insurance Fund can advance funds to the owner to complete the dwelling or pick up the liabilities of the owner due to the bankruptcy or failure to complete. This is the beginning of a complete warranty system that we hope will be introduced before the end of 1973.

Section 27.3 of the act deals with clearance projects of a minor nature following the disappearance of the urban renewal section. It has been brought to our attention by many cities that in some good neighbourhoods single buildings of non-conforming uses or obnoxious uses exist. Representations were made that the act should contain some method of dealing with these special circumstances, hence the inclusion of section 27.31, which allows this outside NIP areas.

Section 37.1 of the act deals with grants to non-profit corporations as startup funds. Many non-profit corporations in this country are well organized and sponsored by service clubs, churches, labour unions, municipalities, et cetera. Non-profit corporations of this type are well able to take advantage of the National Housing Act. Other non-profit corporations, such as those sponsored by Metis or low-income groups, require assistance even to make an application for a project. Section 37.1, therefore, provides startup funds to a maximum of \$10,000 per project to enable non-profit corporations to organize, obtain their charter, option land and develop their plans.

Section 59 of the act makes a change to the loans to Indians on reservations. The former section allowed CMHC to make loans to Indians on reservations for the construction of new housing. The new section allows the corporation to make loans on both new and existing housing and for the improvement of housing. This will ensure that the loans to Indians on reservations and, indeed, to the Metis enable them to enjoy all the provisions of the National Housing Act which are useful to them.

I will now discuss the housekeeping amendments. Section 21 is amended to increase the corporation's authority to make direct loans from \$8 billion to \$10 billion.

Section 12 is amended to raise CMHC's authority to insure loans made by the approved lenders from \$16 billion to \$19 billion.

Section 39.1 is amended to raise CMHC's authority for expenditure for the conduct of research into housing activities from \$15 million to \$25 million.

One or two other minor housekeeping amendments to the act are included, which we will come across as we go through the bill.

My colleagues and I will be happy to answer any questions that honourable senators may have.

The Deputy Chairman: Senator Bourget, do you have a statement to make?

Senator Bourget: I would like the other senators, who have been listening to me on two occasions being asked questions, to proceed with their questions. I may have questions to ask later on.

Senator Bonnell: We have seen, with CMHC and in connection with this legislation, reference to low-income housing, low-income people. What is meant by "low income?" Is it the same for all Canadians from one coast to the other? What is the figure and who sets it?

Mr. Hignett: Generally, when we speak of low-income people in CMHC, we are talking generally about those in the lower half of the income ranges of Canadians, and specifically those in the lower third.

Senator Bonnell: What is the lower half and the lower third?

Mr. Hignett: On a national basis, the lower half of family incomes in Canada is about \$10,000. The lower third is about \$7,500. This varies from province to province. Incomes in Ontario and B.C. are higher than those in other parts of Canada, and incomes in the Atlantic provinces tend to be lower than in the other parts of Canada. But it is surprising how narrow the spread really is among provinces. There are some groups within these, like the Indians and Métis, who are very low income people, and, of course, these are unusual, difficult and specific cases.

Senator Bonnell: Is every Canadian in that lower half, and lower third entitled to get a loan through CMHC, or does he first have to be rejected by two or three trust companies before he comes to CMHC?

Mr. Hignett: One of the activities that CMHC conducts is that we take the position that any Canadian who cannot get a loan from an approved lender is entitled to apply to CMHC. Now generally this means that CMHC tends to take care of Canadians who live in rural areas, in very small places, or in frontier places. But in conducting that activity we are very much in the same position as an approved lender. Until this act becomes law, we have no special aids to help families who cannot afford current housing costs and current mortgage rates.

Senator Bonnell: In other words, if somebody has a poor credit and is turned down by the trust companies, CMHC will take them on?

Mr. Hignett: He may be turned down by CMHC for precisely the same reason, if his credit is really bad.

Senator Bonnell: It seems to me that we should have a policy that if we are in a certain income field we should be entitled to the same benefit. It should not be determined by whether or not we are turned down by a trust company. If your credit is poor, you will end up with the CMHC. If your credit is good and you have paid your bills all your life, the trust companies will take you on and CMHC will not. Therefore you would have to pay a greater interest rate than you would with CMHC, is that correct?

Mr. Hignett: I do not think that is a serious problem. Generally speaking, the lending institutions, trust companies, life companies and the chartered banks, pick up the total demand in the cities of Canada, and where CMHC meets the requirements of Canadians tends to be in the very small towns, crossroads, frontiers and rural places. For example, CMHC has made many loans in Happy Valley, Labrador. Certainly no chartered bank has ever done that.

Senator Bonnell: I notice from this legislation that we are getting involved in remodelling, rebuilding and reconstructing old houses. For the lower income group, that is a good thing and is probably something worthwhile. Is there a limit on how much you will pay for an old house before it can be reconstructed? Can I go out and buy a

\$30,000 home in Ottawa and have CMHC help me finance the reconstruction of it, or are there limitations?

Mr. Hignett: There are about six million houses in Canada. About two-thirds of those have been built since World War II and about one-third were built prior to World War II. About one-third of our houses in the country are 40 years old or older. Some of them are 100 years old. These houses tend to be in the inside built-up neighbourhoods of cities. There are thousands to be seen in places like Montreal and Toronto. They tend to be lived in by low income families and they tend to be substandard. The intention here is that substandard housing be rehabilitated and that it be rehabilitated to the point where it meets the by-laws of the city in which the housing is located. The proposal is that there be loans and grants for this purpose. The grant is to be established by regulation, but at the moment the thought is that a grant by the federal government to a homeowner may be \$2,000. This can be build on by municipalities and provinces as they wish. Perhaps you know that the province of Quebec already has a law which allows them to make a grant of \$1,000. The city of Montreal has a law which allows them to make a grant of \$600. Together with this legislation, it is possible that grants for rehabilitation, federal, provincial and municipal, may run as high as \$4,000. But the intention is not to renovate relatively new housing, but to bring up to a decent standard those substandard houses in Canadian communities.

Senator Bonnell: If your house is not substandard, you cannot apply for this loan?

Mr. Hignett: If it is not substandard you go to the bank for a home improvement loan.

Senator Bonnell: Under CMHC, is it necessary that all lumber used in the construction of homes be approved by CMHC?

Mr. Hignett: Not by CMHC. Some years ago there was introduced into Canada a general system of lumber grading. Lumber is graded one, two, three, four, et cetera. I am by no means an expert on this subject, sir. The building standards require that only lumber of a certain grade be used and that all lumber used in housing be grade stamped, so that the quality of the lumber can be determined very quickly by the corporation's inspectors.

Senator Bonnell: Do you think this regulation puts the cost of housing up for a lot of people in the low income brackets and makes it a very expensive house; whereas in some of the rural areas of this country they could cut their own lumber and build their own houses, but because it is not stamped they have to go to Vancouver to get the lumber stamped, and the cost of their home goes up because of this regulation?

Mr. Hignett: In the beginning there was much discussion about this, because when lumber grading was first introduced into Canada it was introduced not by CMHC but by forestry and the lumbermen's organizations in the country. In some places it was difficult to have grading inspectors at mills, at the cutting sites, to grade lumber as it was produced. This has been in effect for some years and the difficulty has been largely overcome. I am not aware of any difficulties of this kind in the last few years.

Senator Bonnell: In the province of Prince Edward Island, where I happen to live, you do not have any graded lumber. All lumber consequently must be imported. We are surrounded by trees and we cannot use them, unless they are stamped. This might have changed in the last year. What about the interest rate charged on these loans? Is there any specific rate of interest, and is there any subsidization of interest for low income groups?

Mr. Hignett: You will notice that every program that is in this bill is at what we call in CMHC the beneficial interest rate. The beneficial interest rate is regarded as being the lowest interest rate is regarded as being the lowest interest that CMHC can charge, having in mind the cost of borrowing money from the federal government. It has been customary for CMHC to lend money at one-quarter to three-eighths above the rate at which it borrows money from the government. This helps to pay the cost of placing the loan, which is substantial, and the cost of administering the loan. One of the series of amendments made in this bill, to make sure that we stay honest, is to put a limit on the interest rate that CMHC can charge to borrowers. It is set in this bill, for almost every program, at not more than one-half of one per cent above the yield on long-term government bonds.

Senator Bonnell: It seems to me that you had at one time an almost subsidized interest rate for low-income people who become involved.

Mr. Hignett: The rate at the moment is seven and five-eighths. That is the lowest rate we can achieve. At the moment we are borrowing from the government at seven and five-eighths and lending at seven and five-eighths; so it is not a very profitable thing to do. But that is the present circumstances.

Senator Inman: Is there any time limit? What is the time limit on repayment of those loans?

Mr. Hignett: They vary a good deal. Generally for home ownership the act provides for loans of up to 40 years. In practice, amortization periods tend to be shorter than this. Certainly we advise borrowers within their capability not to extend the term too long, because this becomes quite expensive. The majority of loans made by the approved lenders are for 25-year terms. CMHC generally makes loans between 25 years and 35 years. That is for home ownership. For non-profit corporations and these kinds of institutional loans that develop, the term is generally 50 years.

The Deputy Chairman: What is your average loan in each province? Do you have a set-up by provinces? Can you give the average loan?

Mr. Hignett: I am sure one of my colleagues can get it for you. The maximum NHA loan for home ownership, that was passed by regulation last summer, is now \$30,000. So for a house that costs less than \$32,000 the loan is 95 per cent. For houses costing above \$32,000, the maximum NHA loan is \$30,000 and, of course, the equity is the difference between \$30,000 and the cost of the house.

As you know, there has emerged in this country private loan insurance corporations where loans made by lenders are insured by private companies. Their loan limits tend to be much higher than those of NHA. They run as high as \$60,000. But since our interest is in the kind of housing

required by lower and middle income people in the country, \$30,000 seems to us to be appropriate under the present circumstances, and it stops us from getting into the very expensive housing, and that we like.

Senator Walker: Mr. Chairman, may I ask the retiring president a question? Loans to non-profit corporations are dealt with on page 3 of the bill, clause 7, which is the new section 15.1. Not only do you make a loan equal to the total value of the project, but, in addition, you make a grant up to 10 per cent of the value of it under certain circumstances.

Firstly, are you not afraid that this is going to give the opportunity to the do-gooders to get aboard without putting up any money of their own; and, secondly, as opportunity for those who are inclined to make fraudulent deals? I think this would be a wonderful opportunity for that type of individual to get in there and make an easy buck, and put it all over you people. How are you going to police this type of provision where you are advancing the full amount of the lending value—and that, too, can be fraudulent—and, in addition to that, give them a 10 per cent grant, all in the guise of a charitable organization, of course? But that does not mean that you have to lend your money with any greater facility than you do under ordinary circumstances. Have you any safeguards in this respect?

Mr. Hignett: I think, mainly, good judgment, Senator Walker.

Senator Walker: Well, in my experience, good judgment has not been the greatest of all the attributes of all the personnel of all the departments of CMHC. That may be yours, of course.

Mr. Hignett: First of all, the function of the legislation is to take advantage of the strength and willingness of non-profit housing corporations to provide housing for the elderly people and low income families. It is a deliberate attempt to do just that. The legislation restricts us to dealing with charitable organizations, as defined in the Income Tax Act, and with municipalities, and with co-operative associations. Every one of these, with the possible exception of municipalities, will be required to obtain and present a provincial charter to form and operate a non-profit housing corporation. Unless they can get the provincial charter, we will not be prepared to deal with them.

Senator Walker: So you are passing the buck, then, to the provincial government?

Mr. Hignett: If they can get a provincial charter, we will be prepared to consider their proposal. But that is only one of the requirements. The legislation provides that the loan shall be 100 per cent of the lending value, and the lending value is determined by CMHC. I think we have sufficient experience, Senator Walker, to know when we are being taken on the difference between the fair lending value of the project and some costs that are being submitted to us. I think we are capable of doing that, and the legislation is careful enough to say that it is 100 per cent of the lending value, which is to be determined by CMHC. The 10 per cent grant is given to non-profit corporations once the project has been completed, and it is given by simply writing down the loan by 10 per cent.

Senator Walker: How much, then, would it cost, in percentages, a corporation performing all of the requirements here borrowing the full lending value of the building and then getting a 10 per cent grant? In other words, how much of its own money would it have to put into the project?

Mr. Hignett: The bill provides that the corporation be reimbursed for the 10 per cent grant that it makes to non-profit housing corporations. So in the corporations estimates each year, there will be a sum which represents the total grants made to non-profit housing corporations in that year, and that will have to be passed by Parliament through the corporations estimates.

Senator Walker: Clause 7, subclause (2), the last paragraph thereof, states:

... but in no case shall the amount of the contribution made by the Corporation exceed ten per cent of the capital costs of the project as determined by the Corporation.

Well, if you make a loan to the full lending value of the project and then make a grant, which is a contribution, will the charitable organization have to put up any money at all for this project, or will CMHC be financing the whole thing?

Mr. Hignett: In those projects where the cost of the project coincides with the lending value, it is quite possible, and it is intended, that the loan will finance the full cost of the project.

Senator Walker: In other words, you are letting somebody else use your money. That is a hard way to do business. You leave it to the judgment of others, spending no money of their own, to run your show. In other words, they will be running their charitable organizations with your money. That is what it amounts to, is it not?

Mr. Hignett: It amounts to a very substantial encouragement for non-profit housing corporations to get into the business.

Senator Walker: I appreciate that, but that is going to encourage all sorts of people to get a charter, is it not, and make an easy buck, if they are not entirely trustworthy?

Mr. Hignett: They are not allowed to make any profit in managing such a housing project, Senator Walker. There are strings. Their books are examined annually by auditors of the corporation to see that this does not happen and, of course, there are strings on the sale of the project. The project cannot be sold without the consent of CMHC.

Senator Walker: I appreciate that, but you also appreciate what I am talking about. This is a great invitation for fraud, in my opinion, and also it is an invitation to be careless. The charitable organization has no money invested in the project. What do they care? I should think you would be deluged with charitable organizations offering to build homes for you with your money. Do you not anticipate that?

Mr. Hignett: Well, we do anticipate—

Senator Walker: You will not be around, so it will not matter to you. Mr. Teron, without your experience, may have some problems.

Senator Bourget: Isn't the purpose of the grant to help tenants who are in the lower income brackets? It will be passed on to the tenants.

Mr. Hignett: That is right. There is no profit in an operation such as this. The rents charged are to be just enough to pay the amortization costs, taxes, and the operating of the project.

Senator Bourget: There may be some cases such as you raised, Senator Walker, but I think there will be close scrutiny on the part of the corporation to see that there is no profit derived from this. As a matter of fact, that is set out in the bill.

Senator Walker: I realize that, but, to take one alternative, supposing they are not honest. Even if they are honest they are usually stupid when it comes to spending money, particularly these do-gooders. When they get going on a charitable organization with your money, they feel they have wings. They have not put up a dime, but they are running it, all for the sake of charity. You would need ten auditors to supervise something like that.

Mr. Hignett: Do you think, Senator Walker, that the difference between a 95 per cent loan, as is provided for in the present legislation, and a 100 per cent loan, makes all that difference?

Senator Walker: Plus 10 per cent capital grant. I am not answering the questions; I am asking them.

Senator Bourget: Could you tell us what the experience of the corporation has been in this regard, Mr. Hignett, disregarding, of course, the 10 per cent grant, which is something new?

Senator Walker: Here is your defendant.

Senator Bourget: I am just trying to learn.

Mr. Hignett: Our experience with loans to non-profit corporations has been extraordinarily good. The non-profit corporations which we encounter at the moment are usually those sponsored by the service clubs, by the churches, by unions, by the Canadian Legion, by the municipalities. We have, over the years, built about 25,000 units of housing for elderly persons under this section, and we have not had a single failure.

Senator McElman: I have a supplementary, Mr. Chairman. How does the cost of construction completion for such units relate to the private sector and those handled by the service organizations? Let us take as an example, the Canadian Legion? How would the costs compare as between the private sector and the services sector?

Mr. Hignett: I think they compare very favourably. Certainly, housing built by non-profit corporations tend to be lower in costs than housing built entirely by the public, such as homes built under the public housing program. There are a number of reasons for this, one of which is that housing built by governments has to comply very closely with the various labour regulations, minimum wage laws, and so forth, in the country, and some provinces require, as well, that they be unionized. So the tendency is for non-profit housing, on a square footage basis, to cost somewhat less than publicly-sponsored housing, and it compares favourably with the ordinary

housing programs sponsored by private rental entrepreneurs.

Senator McElman: The reason I inquired about that is that in my part of the country some of the low cost housing for the aged, put up through the auspices of the Canadian Legion, for example, was done more efficiently and at a more reasonable cost than that by the other sectors.

Mr. Hignett: They are built with the purpose of maintaining the lowest possible rent. The rent is not aimed at a market other than the lowest that can be achieved, so these projects are generally put together with great care.

Senator McElman: So you consider that these organizations have a very useful input into the whole picture?

Mr. Hignett: Yes, I do, senator.

The Deputy Chairman: Are there any further questions?

Senator Bourget: Mr. Chairman, I should like to stress one point which I made in my remarks yesterday afternoon in the chamber, and that is with respect to the percentage of people who can afford to purchase a home under CMHC. I believe some real estate organization from Toronto stated that only 4 per cent of the people could purchase a home under CMHC. According to the information I have—and this is what I based my remark on yesterday afternoon in the chamber—it is between 20 and 25 per cent. Am I right in that respect, Mr. Hignett?

Mr. Hignett: Yes, you are right, Senator Bourget.

The Deputy Chairman: Does CMHC have an inventory of the housing in Canada broken down into the various categories?

Mr. Hignett: The only inventory we have, Mr. Chairman, at the moment, is that provided by the census from time to time. The census identifies every house in Canada, and identifies whether it is a single family dwelling, an apartment, or whatever form of housing it is. The census also provides a general idea as to what kind of equipment is in the house. For example, it tells us what percentage of houses are equipped with furnaces, bathrooms, running water, and so on, and what proportion of housing is in need of major repair.

These are rather crude statistics, but they are the only statistics we have at the moment. This is why at the Federal-Provincial Conference on Housing in January the ministers agreed that, arising out of the 1971 census, they would maintain on a community basis across Canada a housing inventory and update it annually. This results in much greater knowledge and much finer detail with regard to the quality and quantity of housing in Canadian communities. It suggests ways in which it can be used and additions made to the housing stock to the greatest benefit of the community. This work has been commenced.

The Deputy Chairman: You do not have an inventory broken down by value of houses. You said one-third of the houses were 40 years old, or older. Did you learn that from Statistics Canada?

Mr. Hignett: Yes.

The Deputy Chairman: But Statistics Canada does not tell you where these houses are?

Mr. Hignett: Yes, I think generally they do. For example, we know that housing in the urban communities of Canada generally tends to be in better shape than that in rural areas. We know the proportion of the housing in need of major repairs in rural areas and the proportion in urban Canada, but we do not know enough about it. We are much clearer in our understanding of the quality and quantity of housing in urban centres than in rural areas.

The Deputy Chairman: You mentioned research and innovation. Does the CMHC have any research program in effect now, and are you developing any new innovation with construction companies or other agencies?

Mr. Hignett: Part V of the National Housing Act enables the corporation to conduct research into housing and community planning. There is within the corporation a policy planning division. The responsibility of that division is to continuously review housing policy in Canada and make recommendations to the management of the corporation from time to time. In developing housing policy the corporation conducts what we term "directed research." That is, we seek people to carry out the type of research we think would be useful. That is one method in which housing research is carried out in Canada. Another method is through applications made to us by universities, industry and citizens' groups to conduct research into matters of interest in localities or universities. We finance research of that type also. The notion that CMHC could participate in innovative projects is something we have felt to be necessary for some time. In trying out anything new it is not often commercially viable in its pilot form and if it does not so prove it is very difficult to even test an innovative idea or material. Therefore the act has been changed to allow us to take part of the risk in purely innovative projects and the conduct of pilot projects.

The Deputy Chairman: Some years ago Alcan developed a type of house which I believe cost approximately \$10,000 or \$12,000. Judging by illustrations I saw, it seemed to be a very nice little home and could very well be the answer to many of our housing problems, particularly in the area of low incomes. That does not seem to have proved successful, however. I thought that CMHC was interested in it. Can you tell us why that scheme failed?

Mr. Hignett: I would not say that it has failed, Mr. Chairman. The manufactured home has certain advantages. It is created under factory conditions, seasonal weather does not affect its production and it generally can be built in closely controlled circumstances. The building industry in this country, however, is highly efficient and no manufacturer of homes, of which there are a good many, has yet been able to beat the building industry on the site. The house when built has to be delivered to the site, which has to be bought and serviced. A foundation must be prepared for the house. The home manufacturers such as those of the ALCAN house have an additional difficulty in that their product tends to be standard and not all communities in Canada have yet adopted the National Building Code as their local codes. Due to these differences in codes the manufactured house sometimes cannot find its place in certain communities unless manufactured specifically for that location. Therefore, generally speaking the manufactured home is really not competitive with the ordinary, on-site building practice, although more and more builders in Canada are turning to the manufactured home. They buy it and place it on their own subdivision

on sites which they have prepared themselves. They thus obtain a high-quality article, which is delivered to them in a complete form, which makes life much more easy for them.

The Deputy Chairman: It puzzles me that with housing costs so high that we cannot even begin to think about building for less than \$25,000 or \$30,000, we can drive eight or 10 miles from Ottawa and see beautiful little summer cottages with three bedrooms selling for approximately \$5,000 or \$6,000. Preparing a foundation for a house such as that and placing the house on it would be so much cheaper than the ordinary building of a home that it puzzles me why there should be such a spread between the costs. That type of house is much better than those lived in by many. Today they can be winterized and made habitable, yet only wealthy people who already have a home take advantage of moving such a building to a country site.

Senator McElman: Did you say \$5,000 or \$6,000, Mr. Chairman?

The Deputy Chairman: Yes.

Senator Bonnell: I have never travelled on that road.

The Deputy Chairman: Yes, you can buy bigger ones. You would be surprised.

Senator McElman: How big would that one for \$5,000 or \$6,000 be—nine by 12?

The Deputy Chairman: No, some have two or three bedrooms. It would be worth your while to drive around and see some of them on display. I do not know what the prices are today, but I saw them last year. You can also just read the advertisements in the newspapers and see them listed by Beaver Lumber and others.

Mr. Hignett: But they are generally "build-it-yourself" houses and the price is only for parts.

Senator Heath: My question relates to section 15 and may be rather hypothetical. When a non-profit organization builds, for instance, a condominium-type senior citizens' home, very often the community arranges for the land, which can be one of the greatest expenses for any type of building. The municipality may forgive the taxes, and make the land available at a very reasonable price and service it almost at cost. Local landscapers will donate their services. What would happen to the surrounding land values because of this type of operation taking place at extremely low cost, services being brought in and so on? Would this increase the surrounding land values, or would it decrease them because this is a non-profit type of housing development?

My question has a second part. I assume that CMHC is a mortgage company. If the building organization cannot continue with the running of the project, does the mortgage company foreclose and take possession? What happens in such a case to the total value of the very expensive development in view of such a large proportion of it being donated? What is its actual value and how is it disposed of?

Mr. Hignett: To begin with, support for non-profit housing corporations does take a number of forms, including those you have mentioned. For example, in British

Columbia any non-profit housing corporation building houses for the elderly obtains a grant from the province of one-third of the cost. This means that they only have to borrow two-thirds, which is the only part that is reflected in the rents, which are just sufficient to pay the cost of building and operating the project. The fact that some communities have provided and will continue, hopefully, to provide free or very low cost sites for housing projects sponsored by non-profit organizations has no effect, either upwards or downwards, on the value of the land surrounding the project. Occasionally we hear that the fact that low income groups live in an area has a downward effect on land values. I do not think anyone in the country can ever produce any evidence of this. So the housing built by non-profit corporations does tend to be neutral.

Senator Heath: Could it not have the opposite effect for land speculation? If services were brought in which could not be brought in otherwise, it would be very easy for the surrounding property then to be developed by a speculator who could go to the city council and tell them that as all these services are already there he wants to be hooked up to them. Could that happen and would it matter?

Mr. Hignett: No, I don't think so, because it would be unusual indeed for a municipality to carry services through any substantial acreage of unserviced land to the site of a non-profit project. When municipalities approve subdivisions they sometimes require that some part of them be held for public houses, non-profit housing, or housing for low income groups of one kind or another.

The Deputy Chairman: Are there further questions?

Senator Denis: What is the average rate of interest actually paid by those who borrow from the Central Mortgage and Housing Corporation at the present time?

Mr. Hignett: For all our programs, that is all of the programs in this bill, and public housing, student housing, sewage treatment, programs currently in the act, the rate of interest is a small mark-up on the yield on Government of Canada bonds. Currently it is 7 5/8 per cent. In the last 18 months it has varied between 7 1/4 per cent and 7 5/8 per cent. That is the general level at current Canada Bond votes in the market.

Senator Denis: If I understand you correctly, you do not lend money; you guarantee the loan.

Mr. Hignett: In the insured lending program, that interest rate is set by the market, and it relates to all other interest rates. It relates to Government of Canada bonds, to corporate bonds, to the conventional mortgage rate, the rate at which industries borrow, and the mortgage interest rate tends to find its place in the total capital market. We entered this year with the NHA interest rate being at about 9 per cent, or shading a little under it. Interest rates in the first half of the year have been rising and are now, I think, a little below 9 1/2 per cent.

Senator Denis: There are two ways of lending money for home purposes. In one instance you guarantee the money. You borrow from the bank or from another organization, or you make a loan directly with your own money. In what degree?

Mr. Hignett: The chartered banks, the life insurance companies and the trust companies make loans to builders, to rental entrepreneurs, and to individuals, for very large quantities of housing each year, and these loans are insured under the National Housing Act by the mortgage insurance fund. Those loans are made at market rates of interest which vary from time to time depending on the capital market. The direct loans made by CMHC in very large part are loans that would not be made by the private lending institutions under any circumstances. They are loans for highly special purposes directed mainly at older people and low income people in the country. Those are made at the lowest rate that can be achieved, having in mind the cost of borrowing money by the Government of Canada.

Senator Denis: There could be a difference of 2 per cent.

Mr. Hignett: At the moment there is a difference of about 2 per cent.

Senator Inman: Is there any difference between securing loans in the city and in rural parts of Canada? If a farmer want to borrow money to upgrade his holdings, would it be more difficult for him to get a loan than for someone living in town?

Mr. Hignett: It is rather easier for him, senator. The reason is that he has not only the National Housing Act, but more importantly he has the Farm Credit Corporation, and their deal is much better than ours. Very few farmers ever come to CMHC or ever take advantage of the National Housing Act, because the lending arrangements under the Farm Credit Corporation are much superior.

The Deputy Chairman: You mentioned earlier about grants to individuals for low-cost areas. How are these grants made? Is there a limit on the grants? Do you take security on the house? Is it an outright free grant? What criteria would you use in making a grant to an individual in a low-cost area?

Mr. Hignett: Well, in low-cost areas, at the beginning of this year at least, the cost of housing ranged from about \$15,000 to \$18,000. Now to own such a house would require the payment of principal, interest and taxes in a given amount, and there are many families who just cannot afford to pay that amount. So the idea is that for lower income families who are prepared to pay 22 per cent of their income for housing the actual monthly payments will be tailored to that income; and to the extent that the monthly payment that they can afford to pay is short of the monthly payment that is required to amortize the house, that short-fall will be forgiven, and written off the books of CMHC. The grant is made in that way. It is not made as a cash transaction as between the lender and borrower.

Senator Denis: It is dependent on his monthly payment?

Mr. Hignett: It has to do with his monthly payment, on whether he has the ability to pay.

The deputy Chairman: Only for new homes?

Mr. Hignett: Oh no. For single family dwellings, for condominiums, both new and existing.

Senator Inman: If the farm corporation refuses the loan, so would the CMHC.

Mr. Hignett: There are a number of reasons why an approved lender may decline to make loan. Approved lenders tend to have their mortgage offices in the big cities in the country. We are building, these years, about 250,000 houses a year. The approved lenders, one way or another, account for about 160,000 of these. So they are very active, and there is a strong demand for all of the money that they have available for investment in the cities and towns of Canada.

These companies do not generally maintain arrangements in very small places, in the rural areas or in the frontier places where new communities are developing, and they often decline to make loans in these areas mainly because they are in no position to service them. Not that they have any doubts about the ability of a borrower to pay, but because it is just too expensive for them to take it on. We take those happily. But if a borrower seems on the point of buying or building a house that he simply cannot afford, and they decline him for that reason, then we would talk to the borrower along the same lines and say, "You really cannot afford this house". We go over it with him very carefully to endeavour to show him what part of his income will be devoted to it. This sometimes leads to a more modest house.

There are other occasions where a borrower has incurred debts of a wide variety. There is just nothing left to let him borrow for a new house, and we have to decline for that reason, as would an approved lender.

Senator Bourget: A very important amendment has been brought into the bill which has to do with land assembly. Some people are raising doubts about the amount of money that is being put aside. The amount is \$100 million a year for the next five years. According to your experience, do you think that amount of money will be sufficient to meet the requests and demands that will be made by provinces or municipalities?

Mr. Hignett: I think Mr. Basford would be delighted if it proves not to be enough. Quite apart from the \$500 million to be used for this purpose over the next five years, there is also the loans and grants available under the sewage treatment facilities to build sewage treatment plants and trunk sewers to service new land assembly areas. Potentially this could also require \$500 million over the next five years.

Up to this moment in time, one way and another the land assembly provisions have been in the act for some years, although not the same and not as generous as these. We have not yet come anywhere near the \$100 million, despite the encouragement, the lobbying, the selling we have tried to do. Our best year has been about \$70 million. So, based on our experience in the past, we thought that \$100 million a year, at least in the first year or two, would prove to be optimistic. We hope this will not be the case.

Senator Bourget: I ask this question because doubts have been raised in many quarters, even in the two houses of parliament. For the record, this amount may be sufficient, but if not the minister said he is ready to make more money available to meet the needs and demands.

Mr. Hignett: Certainly it will be a much bigger program than we have been able to generate in the past.

Senator Bonnell: Under CMHC, what amounts of money are available for the different programs? In other words, we have hundreds of millions, say, for land assembly. How much have you got for the different programs? Is this amount of money divided up according to provinces? Is so much allocated to British Columbia, so much to Ontario and so much to the other provinces? If the total amount has not been used by Ontario, could British Columbia come in and pick up the remaining amount of the total allocated to the province?

Mr. Hignett: Yes. The capital budget of CMHC, the money that the government gives it to invest, has for the past two years been at the rate of \$1 billion a year. The minister has said to the provincial ministers that the government of Canada will undertake that the budget will not fall below \$1 billion a year in any of the next five years. So we can look forward to a budgeting level of not less than \$1 billion over the next five years. This is broken down by program and by provinces.

Senator Bonnell: I am interested in Prince Edward Island.

Mr. Hignett: At the moment, pending enactment of the next legislation, the corporation's budget for 1973 is \$974 million. On the day that this legislation is enacted it will become \$1.08 billion. If I could go through quickly, starting in the East, this has been allocated as follows: \$34.5 million to Newfoundland, \$7.5 million to P.E.I., \$50.5 million to Nova Scotia, \$31.5 million to New Brunswick, \$204 million to Quebec, \$342 million to Ontario, \$62.5 million to Manitoba, \$41 million to Saskatchewan, \$84.5 million to Alberta, \$116 million to B.C.

That is based on discussions that we have annually with the provinces, because the public housing program, the federal-provincial housing, non-profit housing, student housing, land assembly, sewage treatment, are generally projects that are sponsored by municipalities and provinces, and we are responding to demand. That is, the initiation is in other hands. These are the results of discussions with the provinces about the extent to which they will take advantage of NHA programs.

To go further with your question, it is quite true that if we find, for example, that the province of B.C., for some reason or other, by September of each year, when we review our budget and the way the budget is being invested, that B.C. is not likely to use its allocation, we are free then to transfer that allocation to any other province where their capacity is greater than was thought earlier in the year. This is done virtually every year.

Senator Inman: Or among any provinces?

Mr. Hignett: Or among any provinces, yes.

Senator Bourget: You do not have to go to Treasury Board?

Mr. Hignett: No, we do not have to go to Treasury Board. We only have to go back to Treasury Board when we need more money.

Senator Bourget: Yes.

The Deputy Chairman: I think, honourable senators, that it would be useful to have that table added as an appendix to the proceedings. Is that agreed?

Hon. Senators: Agreed.

The Deputy Chairman: You can make that available to us, can you, Mr. Hignett?

Mr. Hignett: Yes, Mr. Chairman.

Senator Bourget: Along with the information that Mr. Hignett has already given.

The Deputy Chairman: Yes, but there is more information in this table because it is broken down into sub-headings.

Mr. Hignett: Yes, it is broken down into sub-headings by program.

(For tables, see appendices A, B and C)

Senator Bonnell: Mr. Hignett, could you give us a breakdown of the \$7.5 million with respect to the province of Prince Edward Island? The others will probably compare.

Mr. Hignett: Yes. Prince Edward Island proposes to spend the following amounts: \$1 million on public housing; \$1.5 million on federal-provincial housing, which is another form of public housing; \$500,000 on a non-profit housing; \$2 million on loans for home ownership for new housing; \$500,000 for loans for home ownership on existing housing; \$1.5 million for sewage treatment, and \$500,000 for the assembly of land. That should come to \$7.5 million, senator, if I have given you the right figures.

Senator Bonnell: New communities are also covered in this bill. What percentage of the cost of a new community is available from CMHC? Is it 100 per cent?

Mr. Hignett: There are two ways of doing it, senator. The federal-provincial way is where the new community is acquired by federal-provincial partnership, in which case it is owned 75 per cent, 25 per cent by the federal and provincial governments, respectively. Title is held that way, the investment is made that way, and the participation in operating losses or surpluses would be the same. If the province wishes to go it alone, it may borrow 90 per cent of the cost from CMHC for the same purposes.

Senator Bonnell: And they take the profits and the losses?

Mr. Hignett: Yes.

Senator Bonnell: And that includes sewage, streets, lighting, water, hydro, and so forth?

Mr. Hignett: It includes the acquisition of the land and the complete servicing of the land within the boundaries. It does not include the services leading to the land.

Senator Bonnell: But where you are tearing down the old and building anew, you can get some assistance for services outside of the boundaries of the land? I believe you said you could get assistance to the extent of 25 per cent, or so. Is that what you said?

Mr. Hignett: As far as the neighbourhood improvement program is concerned, to the extent that municipal services have to be replaced because they are old and worn out, the legislation allows a federal contribution of 25 per cent of the cost of doing that and also enables the corporation to make a loan to the municipality of, I believe, two-thirds of the balance. In any event, we can also make

a loan to the municipality for a substantial proportion of its share of the costs.

Senator Bonnell: In any event, there is no clause in this amending bill governing the shell housing program, but I take it the shell housing program still exists?

Mr. Hignett: Yes, it still exists. It does not require any amendment to the act. It will, of course, be incorporated in the assisted home ownership program. The assisted home ownership program will be very effectively used in conjunction with the shell housing program. The shell housing program, in the Atlantic provinces, has been extraordinarily successful in large part. In the Atlantic provinces, where people tend to be good with their hands, a great many people can finish the house providing they have a good sturdily built structure that is completed on the outside. This allows them to finish the interior as they go along. This is a very substantial program in the Atlantic provinces, and in conjunction with the assisted home ownership program, it will be much better.

The Deputy Chairman: Are there any further questions?

Senator Heath: Does CMHC have any recourse against a builder where he has received an instalment payment and then leaves the job? What recourse does CMHC have in those circumstances against the builder?

Mr. Hignett: If there was any point to it, we could sue him. However, what usually happens is when the corporation makes advances, it only advances for the work in the place and endeavours to withhold the cost of completing the house. So theoretically, at least, if a builder goes bankrupt, there are sufficient funds in the mortgage account to finish the house. What happens is that in order for the builder to get his advances, the suppliers and the sub-trades often give the builder a waiver of liens, which deprive them of their future rights. When the builder does go bankrupt, the suppliers and tradesmen are badly hurt.

It is this kind of protection that we try to give the home purchaser who has bought a house and then finds his builder, for bankruptcy or other reasons, cannot complete the house. We want to ensure that he gets a completed house and is protected from liens or other difficulties that arises under such circumstances. This is by no means a complete warranty system. All it ensures the home owner is that he will get a complete house at the price that he undertook to pay, and that he will not find himself with many additional expenditures because of difficulties encountered by the builder.

Senator Heath: Can the corporation, then, protect itself by advising the prospective purchaser not to have such-and-such a builder undertake to build the home? Do you go that far to protect the corporation?

Mr. Hignett: Once a builder goes bankrupt, we watch him very carefully to see that he does not re-appear in the building industry under another name. We have to do this in order to protect ourselves as well.

Senator Bonnell: I should just like to say that I am one hundred per cent in favour of this bill. I think it is a wonderful thing. I think it is a great thing that the government of Canada can come up with a program which is so badly needed by Canadians from coast to coast. To think that a little province like Prince Edward Island, with a

population of 110,000 people, has a need for approximately 5,000 new homes every year. I believe that the housing program in Prince Edward Island has been magnificent in the last two years. I believe that we in the province of Prince Edward Island have made great strides in home ownership and home improvement programs. CMHC may have even gotten some of its ideas from the Prince Edward Island programs.

Co-operative housing programs, and so forth, again have added a big boon to our province in that they allow people of lower and middle incomes to purchase housing which they could not otherwise have afforded. The sewage treatment program, under CMHC, has been tremendous in cleaning up our rivers and streams in that province, and the first thing you know, with your help, we will have a pollution-free province, especially our rivers and streams. They are almost to that point now.

With respect to the community development program, I think you must have gotten that idea from Hillsborough Village, which is being stirred up out there; it is a new town being built near Charlottetown. This will be of tremendous support to them.

I think it is just great, and I want to congratulate the minister and CMHC for a good bill, which was badly needed by all Canadians who are waiting for us to get it through. Therefore, I want to support it.

The Deputy Chairman: Just before we move the adoption of the bill, I have one question for Mr. Hignett. Is lack of uniformity in by-laws and building codes a serious handicap to lowering the cost of housing?

Mr. Hignett: Not as serious as it used to be, Mr. Chairman. More and more Canadian cities are adopting the national building code. The national building code now has very wide coverage across the country. It is something that we urge municipalities to do, and is something that the minister talks about a great deal. Absolute uniformity of the building codes across the country would make it much more efficient, not only for the builders, but for the manufacturers of all materials that go into the building of a house. It is improving all the time.

Senator McElman: Mr. Chairman, I am simply amazed that Senator Bonnell, in speaking about Prince Edward Island, has omitted to say that Canadians are celebrating with Prince Edward Island their centennial year and that all Canadians, including members of the corporation, should go down and see the tremendous advances of the last three years through the auspices of CMHC.

Senator Bonnell: Even the Queen is coming to see that.

Mr. Hignett: I spent last Saturday and Sunday in Charlottetown. I did the proper things. I went to see "Green Gables," I went to Cavendish, and I had lobster at Montague in the lobster shack. The Island looks very well.

Senator Bonnell: You toured the Queen's route!

Senator Inman: Did you go to Brudenell?

Mr. Hignett: Yes, I did. That is where the golf course is.

Senator Bonnell: There is no CMHC money in that.

The Deputy Chairman: Do I have a motion to report the bill without amendment?

Senator Bourget: I so move, Mr. Chairman.

Hon. Senators: Agreed.

The Deputy Chairman: Is it agreed?

The committee adjourned.

APPENDIX "A"

THE POTENTIAL OF THE 1973 CAPITAL BUDGET FOR COMMITMENTS UNDER THE NEW LEGISLATION
(\$ Millions)

NHA SECTION	Approved Capital Budget P.C. 1973-440 (22-2-73)	Amended Capital Budget on Passage of Bill	Non-Discretion- ary under existing legislation	Transferable to new legislation	Allocated Directly for new legislation	DESCRIPTION
43	271.0	248.0	248.0	○	○	Public Housing
40	43.0	40.0	40.0	○	○	
15 NP	82	80.0	○	○	80.0	
15.1 COOP	209.0	2.0	○	○	2.0	Low Rental
15 INT	127	115.0	○	115.0	○	Assisted Home Ownership
34.15 AHO	○	134.0	○	67.0	67.0	Rehabilitation
34.1 REHAB	○	6.0	○	○	6.0*	during start up
47	21.0	21.0	21.0	○	○	Student Housing
53 NEW	145	78.0	○	78.0	○	Residual Lending
53 EXIST.	35	33.0	○	33.0	○	Lending on Existing Units
25	8.0	8.0	8.0	○	○	Urban Renewal
55	8.0	8.0	6.0	○	2.0	Acquisition CMHC
53	134.0	134.0	134.0	○	○	Sewage Treatment
42	○	62.0	○	○	62.0	Land Assembly
40	100.0	38.0	○	○	38.0	Neighbourhood Improvement Prgm
27.5 N.I.P.	○	1.0	○	○	1.0*	during start up
TOTAL	974.0	1003.0	457.0	293.0	258.0	
		100	45	29	26	

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APPENDIX "B"
CENTRAL MORTGAGE AND HOUSING CORPORATION 1973 CAPITAL BUDGET - COMMITMENTS
(in millions of dollars)

Sec.	Programme Low-Income Housing	Nfld.	PEI	N.S.	N.B.	Que.	Ont.	Man.	Sask.	Alta.*	B.C.**	TOTAL
43	Public Housing	4.5	1.0	6.0	9.0	61.0	130.0	35.0	—	17.5	7.0	271.0
40	Fed./Prov. Housing	4.5	1.5	16.0	1.0	—	—	2.0	7.0	.5	10.5	43.0
15	Non-Profit	2.0	.5	5.0	2.0	23.0	10.0	7.0	4.0	10.5	18.0	82.0
15	Entrepreneur	4.0	—	8.5	2.5	36.0	35.0	4.0	4.0	15.5	17.5	127.0
	Sub-Total	15.0	3.0	35.5	14.5	120.0	175.0	48.0	15.0	44.0	53.0	523.0
Other Housing												
47	Student Housing	1.0	—	.5	1.5	2.0	7.0	1.0	1.0	2.0	5.0	21.0
58	Home Ownership — New	8.0	2.0	5.0	5.5	40.0	24.0	6.5	21.0	21.0	12.0	145.0
58	Home Ownership — Exist.	2.0	.5	1.0	1.0	11.0	8.5	1.0	1.5	6.5	2.0	35.0
	Sub-Total	11.0	2.5	6.5	8.0	53.0	39.5	8.5	23.5	29.5	19.0	201.0
Infra-Structure												
25	Urban Renewal	.5	—	.5	1.0	3.0	3.0	—	—	—	—	8.0
55	Direct Acquisition	—	—	—	—	3.0	3.5	—	—	—	1.5	8.0
53	Sewage Treatment	2.0	1.5	5.0	6.0	25.0	56.0	3.5	2.0	8.0	25.0	134.0
40	Fed./Prov. Land	6.0	.5	3.0	2.0	—	65.0	2.5	.5	3.0	17.5	100.0
	Sub-Total	8.5	2.0	8.5	9.0	31.0	127.5	6.0	2.5	11.0	44.0	250.0
	Total	34.5	7.5	50.5	31.5	204.0	342.0	62.5	41.0	84.5	116.0	974.0

*Includes N.W.T.

**Includes Yukon

December 29, 1972

APPENDIX "C"
CENTRAL MORTGAGE AND HOUSING CORPORATION 1973 CAPITAL BUDGET - COMMITMENTS NEW UNITS

Sec.	Programme	Nfld	PEI	N.S.	N.B.	Que.	Ont.	Man.	Sask.	Alta.	B.C.	TOTAL
43	Low-Income Housing											
	Public Housing	325	75	450	750	4,500	8,800	2,700	—	1,400	500	19,500
40	Fed./Prov. Housing	375	125	1,350	100	—	—	175	575	50	950	3,700
15	Non-Profit	100	25	275	100	1,350	550	450	200	550	900	4,500
15	Entrepreneur	300	—	625	175	2,750	2,600	300	300	1,150	1,300	9,500
	Sub-Total	1,100	225	2,700	1,125	8,600	11,950	3,625	1,075	3,150	3,650	37,200
	Other Housing*											
58	Home Ownership - New	525	150	325	375	2,400	1,600	425	1,400	1,500	800	9,500
	Total Housing	1,625	375	3,025	1,500	11,000	13,550	4,050	2,475	4,650	4,450	46,700

NOTE: The Capital Budget would also finance 8,300 hostel places for elderly people and students
*Include 4,500 low income housing for assisted homeownership (current programme)

December 29, 1972



FIRST SESSION—TWENTY-NINTH PARLIAMENT
1973

THE SENATE OF CANADA
PROCEEDINGS OF THE
STANDING SENATE COMMITTEE ON
**HEALTH, WELFARE
AND SCIENCE**

The Honourable CHESLEY W. CARTER, *Deputy Chairman*

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Issue No. 5

WEDNESDAY, SEPTEMBER 12, 1973

Complete Proceedings on Bill C-219

“An Act to amend the Old Age Security Act”

REPORT OF THE COMMITTEE

(Witnesses—See Minutes of Proceedings)

THE STANDING SENATE COMMITTEE ON
HEALTH, WELFARE AND SCIENCE

The Honourable Maurice Lamontagne, P.C.,
Chairman

The Honourable Chesley W. Carter, *Deputy Chairman*
and

The Honourable Senators:

Argue	Goldenberg
Blois	Hastings
Bonnell	Inman
Bourget	Langlois
Cameron	*Martin
Croll	McGrand
Denis	Phillips
*Flynn	Smith
Fournier	Sullivan
(<i>de Lanaudière</i>)	van Roggen
Fournier	
(<i>Madawaska-</i>	
<i>Restigouche</i>)	

**Ex officio Members*

20 MEMBERS

(Quorum 5)

Order of Reference

Extract from the Minutes of Proceedings of the Senate,
Tuesday, September 11, 1973:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Lapointe, seconded by the Honourable Senator Fournier (*Restigouche-Gloucester*), for the second reading of the Bill C-219, intituled: "An Act to amend the Old Age Security Act".

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Lapointe moved, seconded by the Honourable Senator Fournier (*Restigouche-Gloucester*), that the Bill be referred to the Standing Senate Committee on Health, Welfare and Science.

The question being put on the motion, it was—
Resolved in the affirmative."

ROBERT FORTIER
Clerk of the Senate

Minutes of Proceedings

Wednesday, September 12, 1973.

(5)

Pursuant to adjournment and notice, the Standing Senate Committee on Health, Welfare and Science met this day at 11:00 a.m. The Deputy Chairman, the Honourable Senator Carter presided.

Present: The Honourable Senators Blois, Bourget, Cameron, Carter, Flynn, Goldenberg, Inman, Martin and Smith. (9)

Present, but not of the Committee: The Honourable Senators Benidickson, Laird, Lapointe, McElman, Molgat and Yuzyk. (6)

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

The Committee proceeded to the consideration of Bill C-219 "An Act to amend the Old Age Security Act".

The following witness was heard in explanation of the Bill:

From HEALTH AND WELFARE CANADA:

The Honourable Marc Lalonde, P.C., Minister.

On motion of the Honourable Senator Smith, it was *Resolved* to report the said Bill without amendment.

At 12 Noon, the Committee adjourned to the call of the Chair.

ATTEST:

PATRICK J. SAVOIE,
Clerk of the Committee.

Report of the Committee

Wednesday, September 12, 1973.

The Standing Senate Committee on Health, Welfare and Science to which was referred Bill C-219, intituled: "An Act to amend the Old Age Security Act", has in obedience to the order of reference of September 11, 1973, examined the said Bill and now reports the same without amendment.

Respectfully submitted.

Chesley W. Carter,
Deputy Chairman.

The Standing Senate Committee on Health, Welfare and Science

Evidence

Ottawa, Wednesday, September 12, 1973.

The Standing Senate Committee on Health, Welfare and Science, to which was referred Bill C-219, to amend the Old Age Security Act, met this day at 11.00 a.m. to give consideration to the bill.

Senator Chesley W. Carter (*Deputy Chairman*) in the Chair.

The Deputy Chairman: Honourable senators, we have before us Bill C-219, an Act to amend the Old Age Security Act. Appearing as witnesses are the Minister of National Health and Welfare, the Honourable Marc Lalonde, and Miss N. O'Brien, Director of Legislation and Policy Development and Review, Income Security Branch.

Mr. Minister, do you wish to make a preliminary statement?

Hon. Marc Lalonde, Minister of National Health and Welfare: It will be very short, Mr. Chairman. First of all, I thank the Senate for its invitation to appear before this committee today with respect to this particular bill. I am all the more thankful as this is the first opportunity I have had to appear before a Senate committee since being appointed minister. Unfortunately, I was unable to appear when previous amendments were made to the Old Age Security Act, on which occasion my Parliamentary Secretary attended the committee meeting.

The bill speaks for itself, if I may use that language. Maybe it speaks for itself in rather cumbersome language, but I believe the speakers for the Government in the Senate have explained the objective of the bill. Essentially it is to adjust quarterly payments to old age pension recipients rather than making the adjustments annually.

Those are all my opening remarks, Mr. Chairman.

The Deputy Chairman: We are now ready for questions.

Senator Flynn: I would like the minister to know that we are pleased to have him visit us. We understand that he may return with other legislation, some of which appears to have been improvised, because we had not heard of it until two weeks ago. The minister will recall that last April he pushed through the house another amendment to the Old Age Security Act, whereby the pension was raised to \$100 and adjusted according to the index of the cost of living on an annual basis. I wonder why at that time the minister did not see fit to authorize adjustments on a three-monthly basis, as is now provided.

[*Translation*]

Mr. Lalonde: Senator Flynn, at the time, several reasons were justifying this decision. First, of course, an adjustment of this type would represent a rather substantial increase in administration costs. These would require an additional expenditure amounting to one and one half to

two million dollars for the speeding up of escalation alone, that is to do it once every three months rather than once a year. Moreover, I said myself at the time that I was very much in favour of a yearly adjustment escalation clause.

[*Text*]

Senator Smith: Mr. Chairman, I wonder if I might interrupt on a point of order. We are not getting a translation of what the minister is saying. I think it is quite important that we all understand.

The Deputy Chairman: We do not seem to have a translator in the booth.

Hon. Mr. Lalonde: I will switch to English. May I begin again and consider what I have already said as not having been said?

There were a couple of reasons why I objected to the idea of a quarterly or even monthly escalation last spring, which some were proposing at that particular time. First of all, as to a monthly escalation, it simply is not feasible. It would not make sense in terms of paper work, the cost involved, the adjustment for people on GIS, and so forth. Because of the paper work involved it was not feasible. However, the feasibility of a quarterly or semi-annual escalation, obviously, is much more of a possibility. The only question involved is that of the administrative cost. Escalation on a quarterly basis means an additional \$1½ million to \$2 million in administration costs because of the more frequent adjustments, contracts, in particular, with all of the people who are on GIS. At the time, I said, and I still maintain as a position of principle, that it is preferable to have an annual adjustment and an occasional adjustment in the basic rates, whether it be on the GIS or the OAS pensions, on a periodic basis, not only to bring the pensioners up to the adjustment in the consumer price index but also, if you wish, to allow them to share in the growth of the Canadian economy.

However, during the last six months, in particular, and even last spring, I had to recognize that the increases in the cost of living had certainly been much more substantial than I had expected them to be. I would have thought that if we were talking in terms of a 3 to 4 per cent increase in the cost of living, a quarterly escalation is not really worth the additional \$2 million for administrative costs and salaries to civil servants. But if you go into a period of very high increases in the cost of living, such as we have experienced in the last while, then, obviously, you have to balance out the increases in the cost of administration of the plan against the benefits that would accrue to the senior citizens. Because of the current situation, for instance, this particular increase is going to provide our senior citizens with an additional \$90 million to \$95 million. Therefore, it becomes a worthwhile propo-

sition to spend an additional \$1½ million to \$2 million in additional administrative costs to permit this payment to our senior citizens.

If the inflationary trend is dampened and there is a substantial decrease in the rate of increase in the cost of living, we may find that escalation on a quarterly basis is not such a good idea. If we get back to the situation where there is an increase in the cost of living of 3 or 4 per cent a year, we would be making a 1 per cent adjustment on a quarterly basis while still incurring, as I said, an additional \$2 million in administrative costs. With good officials, we might even be able to reduce that additional cost as we go along.

So, in answer to your question, Senator Flynn, I have changed my views on this because the circumstances have changed. Fundamentally, I still maintain that my initial approach would be preferable. However, the circumstances are such that they have made it almost absolutely necessary for us to act in the way we have.

Senator Flynn: In other words, this is a short-term decision that you have made. You suggested that you might revert to the old scheme if there were a levelling of the cost of living.

Hon. M. Lalonde: I would not want what I have said to be interpreted in that way; I do not think that is what I said.

Senator Flynn: But there was some indication of that.

Hon. Mr. Lalonde: I should like to clarify that. Quite simply, the act is going to be amended and, until Parliament decides to change the act, we will operate on the basis of a quarterly escalation. The point I wanted to make was that once the rate of inflation levels off from what it is at the present time, we will find that quarterly escalation is not that meaningful a step in terms of the benefits to be paid to our senior citizens. That is all I am saying.

Senator Flynn: You said you reluctantly changed your mind because of the circumstances. Where they economic circumstances or political circumstances?

Hon. Mr. Lalonde: They were most certainly economic circumstances. One has to look at the plight of senior citizens and the amount of money they are "losing" because of the fact that the escalation takes place only once a year.

Senator Flynn: The groans of Mr. Lewis did not influence you?

Hon. Mr. Lalonde: No. I could have taken another route, that being simply to increase the flat rate rather than have a quarterly escalation. We could have used that \$98 million to increase all payments by an average of \$5 or \$8. I do not have the precise figure, but it can easily be calculated. In other words, we could have made a single adjustment in the payment and carried on with the annual escalation.

Senator Flynn: Had this scheme been incorporated in the legislation which came before us last April, could you say what the increase would have been, let us say, for the month of July?

Hon. Mr. Lalonde: There could have been an adjustment for the month of July that would have gone from October

to April last. I am afraid I do not have the exact figure, but if you calculate the rate of increase in the cost of living, the consumer price index, between October and April, and multiply it by whatever is being paid, you will have the figure. It would be rather easy to calculate, but I cannot give you the exact figure offhand.

Senator Flynn: The \$100 was based on the index for the period from October, 1972 to July, 1973; is that it?

Hon. Mr. Lalonde: No. The \$100 increase included two things. First of all, it included an adjustment based on the increase in the cost of living between October, 1971 and October, 1972, over the period October, 1970 to October, 1971, which represented a little over \$4 all told at the time. Then there was an additional \$14 or \$15 added to the basic and more for the GIS payments. So the largest part of that increase in April was a straight increase in benefit payments to senior citizens. Only about a quarter of it, or less, represented an adjustment based on the consumer price index.

Senator Flynn: Although that was not provided in the law at that point; it had been erased from the scheme of the old age security pension. When you say that the \$4 was to compensate for the increase in the cost of living, you mean that this was an increase that had taken place since the previous adjustment?

Hon. Mr. Lalonde: Since the last adjustment which had taken place the previous April. It had been set at \$82.88 the year previous, and would have increased in accordance with the cost of living to \$86.61, if we had not made an additional adjustment to \$100.

Senator Flynn: But that had been frozen.

Hon. Mr. Lalonde: All these things are frozen only when Parliament wants them frozen.

Senator Flynn: It has been frozen. That is why I say it is afterthought when you say \$4 was to be accounted to the increase in the cost of living. The 5.3 per cent, which will be the adjustment provided in the present bill, is based on the increase in the cost of living for what period?

Hon. Mr. Lalonde: For the period October, 1972 to July, 1973, over the 10 months previous to October, 1972.

Senator Flynn: Ten months?

Hon. Mr. Lalonde: Yes. You have to compare the same periods if you want to have the increase; you compare 10 months with 10 months.

Senator Flynn: So this \$105.30 will cover the increase up to July 1 of this year or the end of July?

Hon. Mr. Lalonde: July 31. There is a two-month time lag on this program. For instance, in October we will not yet have the increase in the consumer price index for September, so we will not know what the figure is. Tomorrow we will have the figures for August, but we are already printing cheques for October, so it would be impossible to adjust this.

Senator Flynn: The cheques for October will be based on the index calculated at the end of July.

Hon. Mr. Lalonde: That is right.

Senator Flynn: Then the next adjustment will take place for January, 1974, and will take into account the increase from July 31 to when?

Hon. Mr. Lalonde: To the end of October. You always go back two months before the increase to see the period that it covers.

Senator Flynn: You mentioned that the cheques were already being printed.

Hon. Mr. Lalonde: The calculations are being made; the cheques are not being printed. I am advised that the printing of cheques will start at the end of September or early October, but the calculations have to be made for 1,800,000 cheques. On 700,000 or 800,000 it is pretty easy, because these are basic payments, but additional adjustments have to be made to all of the GIS payments, and this represents another 1.1 million cheques.

Senator Flynn: When are the cheques sent out?

Hon. Mr. Lalonde: For delivery on the third-last banking day of every month.

Senator Flynn: So the new amounts will be posted in the third week of October.

Hon. Mr. Lalonde: They will be posted a little before that. We want to make sure they can be cashed in the third week.

Senator Flynn: When we passed the amendment last spring to the Old Age Security Act, to provide for a pension of \$100 a month, I think the bill received royal assent on April 5, but it was in fact retroactive to April 1. If my memory serves me right, the cheques were sent in time on that occasion, and there was no delay in receipt by pensioners of their cheques.

Hon. Mr. Lalonde: We can check this matter, but I am advised by my officials that the adjustments were not ready to be included in the cheques in April.

Senator Flynn: The cheques for April included the increase provided in the amendment?

Hon. Mr. Lalonde: My officials advise me that they are not sure. I am told that their best recollection at the present time is that it was included in an adjustment made in May rather than in April. You might be right on this; I would not quarrel with that. We can find out, if you wish.

Senator Flynn: Would you let me know by letter if it is otherwise?

Hon. Mr. Lalonde: We will try to let you know before the end of this meeting.

Senator Flynn: Do I understand that the amount which will be distributed for the remainder of the year, or until the date when there will be an adjustment under the legislation as it stands now, is \$95 million?

Hon. Mr. Lalonde: I said that the additional amount being paid to senior citizens, because of quarterly adjustments between now and the end of the fiscal year, will be between \$90 million and \$95 million.

Senator Flynn: The adjustment will have been made only at the end of the fiscal year?

Hon. Mr. Lalonde: At the end of the fiscal year.

Senator Flynn: For April of next year?

Hon. Mr. Lalonde: For April of next year, and will have gone back only to October of this year. In April, 1974 we will have paid on the basis of the increase in the cost of living from October, 1972 to October, 1973 over October, 1971 to October, 1972, the year previous, so not only are we having the quarterly adjustment, but we are also gaining a good four months in terms of advancing the payments to senior citizens.

Senator Flynn: When you decide the amount of an increase like that, do you calculate the amount the government may receive by way of additional income tax?

Hon. Mr. Lalonde: The \$90 million to \$95 million is a net figure after income tax receipt.

Senator Flynn: You mean this is additional only; this is not the amount paid out?

Hon. Mr. Lalonde: That is right.

Senator Flynn: Is the net amount the offset of the additional tax?

Hon. Mr. Lalonde: That is right. You must remember that GIS is exempt from taxation, to begin with.

Senator Flynn: Of course.

Hon. Mr. Lalonde: So you have only the OAS portion. The level of taxation for senior citizens, due to higher exemptions and so on, is comparatively low.

Senator Flynn: This figure has always been given as not the net disbursement but the gross disbursement provided by the act.

Hon. Mr. Lalonde: I am advised that this is the net figure. Usually we calculate those figures in terms of net figures.

Senator Flynn: What would be the gross figure?

Hon. Mr. Lalonde: I do not have it with me. I will try to get the figure for you before the end of the meeting. Again, the amount of recovery in income tax is comparatively small, because it applies only on the basic rate, the \$100 at the present time.

Senator Flynn: Usually in the estimates this is a gross figure.

Hon. Mr. Lalonde: Yes, but we were asked how much more it would cost for this particular program, and we usually give it in net figures.

Senator Bourget: Are the calculations made in your department or in the Department of National Revenue?

Hon. Mr. Lalonde: The calculations are usually made in our department, but in consultation with National Revenue and the Department of Finance, obviously.

Senator Cameron: Is it not true that if the forecast of the International Monetary Fund released a couple of days ago is true it is very fortunate that this amendment is being made now?

Hon. Mr. Lalonde: In part. Indeed, if I had come to the conclusion in my own mind that this was a very, very short-term move, a move of a few months in the consumer price index, we would probably not have done it that way; we would probably have made an adjustment to the basic benefit. Indeed, in the light of the information that seems to be coming out of official bodies for industrial countries all over the world, I think we have to assume or act as if this inflation is to carry on for at least a while.

Senator Inman: Has the minister in mind any limit of time or amount in which these adjustments will be made—say, five or ten years?

Hon. Mr. Lalonde: I am glad you assumed, senator, that I would still be minister in five or ten years. This is like any other act of Parliament: it is permanent for as long as Parliament decides it is to remain as it is. For as long as Parliament does not change this proposed legislation, we will continue to make adjustments every quarter. I cannot imagine any government being able to make adjustments on a more frequent basis; I think it is practically not feasible.

Senator Benidickson: Mr. Minister, as I read the debates in the other place in connection with this bill, I recollect that the thrust from the opposition there was directed probably to three areas. Several members suggested that the age of entitlement should be lowered to 60. There was another basic suggestion or criticism, that the amount payable should go from \$107, say, for a single recipient on a basic rate, to \$150 or \$200 a month. Several people suggested that a spouse under age 65 should be paid a pension if the other spouse was a pensioner. I thought those were the basic criticisms of the present bill.

I have read your speeches in the past and have heard some of your speeches personally. You have always indicated, particularly with respect to the cost involved in lowering the age of entitlement, that it was your view that you must always relate the resulting increased expenditure to the overall expenditure in other fields of social benefits; that there must be some limit and some necessity to see that there was a fair distribution in this respect in old age pensions, family allowances, assistance under the Canada Assistance Act and other benefits under your administration.

I wonder if you could give us an indication of the increased cost of some of these suggestions, if accepted; and how this would affect the overall percentage of take by senior citizens in relation to the total federal income.

I noticed the other day that you answered a question in the House of Commons with respect to family allowances. The question was asked as to the percentage of federal government income directed to family allowances, I think, at the time of the inauguration of the program, and the relationship with the percentage of tax revenues or income of government; and how that would relate to a recent time, perhaps last year.

I wondered if you could indicate to us, similarly, the percentage of either your departmental or the national tax revenue that is directed now to pensions for senior citizens, compared to that percentage, say, ten years

ago or something of that kind. I will leave it to you to select the figures that are of your knowledge.

Hon. Mr. Lalonde: I will try to keep my answer reasonably short, senator, on this particular problem that you raise. In the House of Commons there were indeed three main points, and I think you have identified them properly. One was the lowering of the age to 60. Secondly, the demand or request for payments has now gone from \$150 to \$200. The New Democratic Party has just joined the Creditistes in the \$200 camp, but I expect the Creditistes to come back next time with a demand for \$250. The third point was eligibility of a spouse under the age of 65.

I have taken the view on these matters that we have to look at the allocation of resources in the field of social security, not only at the federal level but also at the provincial level. That is why we undertook a global review of our social system with the provinces last April. This review is progressing. I have already had a conference with my colleagues; I have another one coming up in October; and we are due to meet every three months during the next two years to complete a systematical review. I have made a commitment to my provincial colleagues that there would be no substantive changes in the structure of the federal social security system without previous consultation and, if possible, the development of a consensus.

Senator Benidickson: Does that include a social development plan or social payment plan that would be paid solely by the federal treasury?

Hon. Mr. Lalonde: It does, because, really, when you are proceeding to a general review like this, there are only so many tax dollars available, and if you decide to gulp a large amount suddenly on your own, this is bound to have an effect on the social security system. We cannot ignore that.

I thought—I hoped I had a similar commitment from my colleagues. I begged them to give me a commitment. Most of them did, and it would be fair to assume that all of them said that that would be the case—except that I am afraid I have to recognize that we have not been able to get, from some of them, the same amount of commitment and the same amount of co-operation that the federal government has given them.

So, as far as the lowering of the age to 60 in the case of the spouse is concerned, these are matters which we are reviewing and discussing at present with the provinces.

This could be dealt with in many ways. Obviously, it could be dealt with by strictly lowering pensions, but it can also be dealt with by the introduction either of a form of guaranteed income or adjustments under the Canada Assistance Plan program and payments at the present time. Once you have lowered the age to 60, what do you do with the people of 59 and 58 who are in a similar situation? So lowering the age to 60 is no magic answer to the real problems that people are facing.

As far as the cost of lowering the age to 60 for everybody is concerned, if you were to take the payments we have now and lower the age to 60, that is, give \$100 to every citizen between 60 and 65 and add the guaranteed income supplement—and now we are talking about \$107

and \$179.50—it would be about another \$1 billion, just for that category.

If you were to pay only the GIS, that is, if you were to make the whole payment subject to the income test, that is, the whole \$170 being subject to income test rather than pay the basic \$100 without income test, then the cost would be lower, but the cost to the federal government would still be reasonably close to \$400 million.

In terms of the allocation of funds to old age security in this country, I do not have at hand the figures for making a comparison for ten years ago, but I will give you the figures between 1967 and now. In 1967 we were paying about \$1 billion in old age security. With this particular bill it is going to take us over the \$3 billion mark. So this country has in six years tripled the sums of money allocated to the social security of its senior citizens.

Well, we certainly have not yet done anything similar with respect to the other fields of social security, whether under family allowances or under the Canada Assistance Plan; we must not lose sight of the plight of the deserted mothers, the handicapped, the blind, and all the people who are on social assistance, for which the federal government pays 50 per cent at the present time.

I mentioned in my speech in the house that the payments we are presently making to senior citizens are higher in six out of ten provinces than the payments to a couple with two children, on social assistance.

Senator Benidickson: And much less for single people.

Hon. Mr. Lalonde: That is right. In fact, they are very substantially higher than what is being paid for a couple in any province. If I remember well, the highest amount in a province was something like \$250. We are going to be paying \$341. Some provinces are paying as low as \$200 a month, if I remember correctly.

Let's face it! Some provinces would find it very difficult to pay more than they are paying at the present time. There are others who could afford to pay more, but, as I say, there are some who would find it very difficult. So what we are doing, and, indeed, what we must do as a country, is to look at the total resources available in the field of social security and see that we are going to be fair in the distribution or redistribution of income to all levels of the community.

There has been a tendency on the part of some groups or parties to focus their entire attention on senior citizens, and every time it is suggested that something must be done in the field of social security the only thing they seem to have in mind is raising old age pensions. But there is more to it than that. Our effort, while being fair to the senior citizens and while certainly giving them what is really owed to them for what they have contributed to the country, should not at the same time leave by the wayside all those other groups who are in need, genuine need, and who at the present time are not receiving what one obviously would consider to be their fair share. So that is the situation.

Everything is possible. We could lower the age for old age pensions to 55. I even proposed that it be lowered to 44, myself!

Senator Flynn: You don't look that old, anyway.

Hon. Mr. Lalonde: But how much money is going to be left for the other people in need? That is the type of question we must ask ourselves more and more. I am afraid that we may not have been asking that question enough in this country.

Senator Benidickson: Mr. Minister, you referred to the range of payments to a couple entitled to welfare, either because they are unable to work or because they are disabled, or for other causes. The federal government will pay 50 per cent of those payments to the provinces. Is that right?

Hon. Mr. Lalonde: That is right.

Senator Benidickson: Is there a limit on the amount a province can pay under those circumstances and still receive the 50 per cent contribution from the federal government?

Hon. Mr. Lalonde: No, so long as they subject the claimants to the needs test provided under the Canada Assistance Plan there is no limit.

Senator Benidickson: That brings me to an article in the *Montreal Gazette* of this morning which indicates that it is proposed by the Parti Québécois leader, Mr. Lévesque, that there be a program in the province of Quebec with respect to family allowances which would increase from \$17 to \$45 the payment to a child. He compares that to the present \$12 a month that is proposed. He admits that the largest part of the money to pay for the program would be supplied by the federal government.

Under what legislation would the federal government be obligated to contribute what he says would be \$497 million out of a total expenditure of \$735 million in 1974 for allowances for persons up to 17, if his proposal were accepted?

Hon. Mr. Lalonde: First of all, there is no legislation that would allow for such payments of any sort at the present time. The only means whereby the federal government would contribute 50 per cent, as I say, is under the Canada Assistance Plan, and that is not for family allowances.

In the second place, obviously, if Mr. Lévesque were to be in charge of the province there would be no federal government to deal with, according to his own theory. So I do not see how he can argue that this money would come from the federal government.

But I cannot take these claims too seriously. I have seen some of the proposals of the Parti Québécois in Quebec in their so-called platform, and, you know, that reads even worse than a lot of the Social Credit proposals I have been reading about or hearing about in Quebec over the last few months. I cannot remember exactly the figures, but they were rather unbelievable, if you added them up and tried to find out who would finance them. So I cannot take those statements too seriously.

Senator McElman: It's easy to commit, when you do not have to produce

Hon. Mr. Lalonde: That is right.

Senator Cameron: Mr. Chairman, the minister indicated that in 1967 the cost of the old age pensions was roughly \$1 billion and that in 1973 it will be \$3 billion.

I am not very good at mathematics, but it would seem that in 1967 \$1 billion was about 5 per cent of the GNP, while in 1973 the expenditure on old age pensions will be about 15 per cent. So, in effect, we are spending an increase of 10 per cent of the GNP in a period of six years.

Hon. Mr. Lalonde: That is right. It is a very substantial increase. It is \$3 billion of the total federal budget of about \$21 billion; so you can divide it out yourself very easily: it comes out to about one out of every seven federal dollars going to the old age pensioners at the present time. Mind you, that increase is due in part to the lowering of the pension age from 70 to 65 during that period: it is not just an increase to the same number of people; we cover a much wider range. But there it is: it is the payment for senior citizens. And it is quite proper to ask the question: What are we going to do for the other groups as well?

Senator Flynn: Mr. Chairman, I wish to ask the minister two questions. The first is with respect to the answers he gave to Senator Benidickson. Do I interpret the minister correctly in saying that his approach to the payments to our senior citizens is that they are at this time receiving perhaps a little more than their share of the amount which should be available to needy people in Canada; and that, in fact, the government is trying to resist the pressure of all of the political parties and give them only the minimum required to stay in office?

Hon. Mr. Lalonde: I would certainly qualify that as a very partisan point of view.

Senator Flynn: Partisan question?

Hon. Mr. Lalonde: Or partisan question, yes.

Senator Flynn: But the move would be, also.

Hon. Mr. Lalonde: No, what I said I think stands by itself, and quite clearly. Certainly, there is no intention by the government to reduce payments to senior citizens or to suggest that what has been done has been too much. Definitely not! At the same time, if in terms of social policy you asked me whether it would be sensible to treble the payments to senior citizens in this country over the next six years without a comparable adjustment for other groups in society, I would have to say that this country, the government and Parliament would have their priorities wrong. We are asking for a very large amount of trouble, not only with provincial governments, who also have demands made on them, but also with other groups in society. In order to attain a reasonably harmonious Canadian society we must endeavour to be fair to all groups. At the present time the federal government pays senior citizen couples approximately \$400 above the poverty level, as defined by the Economic Council and as adjusted to the cost of living increases during the recent past.

We may ask: Is this sufficient? I can assure you there are some who will say no, that it should be more. At the same time, however, we must consider other circumstances in the country. In my opinion, if there is a particular sector in which the next step or an increase should be provided, it may very well be the case of the single individual. Certainly, a couple is in a much better position than a single individual at the present time to cope

with their needs. There may be a need for special consideration in this area as a step in the future.

Senator Flynn: I am not in disagreement with your outlook, but I am attempting to analyze the decision made at this time by means of this legislation. Do you see the possibility of a decrease in the cost of living and, consequently, the application of the reduction rule to the amount now paid? If there were a decrease in the cost of living, the pension would be lower.

Hon. Mr. Lalonde: This bill provides that there will be no reduction due to a decrease in the cost of living. The payments will remain at the same level until there is an increase in the cost of living sufficient to raise the payment above the last period at which there was no increase.

Senator Flynn: The floor is the highest amount reached at a given point?

Hon. Mr. Lalonde: That is right, and we wait until the cost of living returns to a higher level than it was when that particular floor was reached before making an adjustment.

Senator Flynn: So there is pessimism in this legislation.

Hon. Mr. Lalonde: On the contrary. We wish to be fair to the senior citizens, but we foresee the possibility of the cost of living decreasing. For all I know, with the price of meat moving as it is these days, you may be surprised next October.

Senator Flynn: If the cost of living were to decrease, the income of the government would also decrease and it would represent possibly an unfair share of the expenditures.

The Deputy Chairman: Do honourable senators have further questions?

Hon. Mr. Lalonde: Mr. Chairman, I have an answer to the first question raised by Senator Flynn, and I will endeavour to obtain the answer to his second question at a later stage.

The adjustments last April were, indeed, included in the April cheques, so you were correct. Approximately three weeks is required for the printing and issuance of the cheques in order that they may be in the hands of the pensioners on the third-last banking day. There may, however, have been cheques received last April at a later date than usual, due to delays.

Senator Flynn: None was received by any, to my knowledge.

Hon. Mr. Lalonde: Maybe they write to their members of Parliament more than to their senators!

As far as the October cheques are concerned, this would mean approximately October 7 as the deadline for citizens to receive their cheques. There was a question in connection with the net and gross figures as related to the total amount.

Senator Flynn: That could be supplied later.

Hon. Mr. Lalonde: If I do not have that before the end of the meeting, I will supply it later.

The Deputy Chairman: The Special Senate Committee on Poverty carried out an investigation and found that the distribution of wealth in Canada was such that the top 20 per cent of income earners received approximately 38 to 40 per cent of the wealth produced, while the bottom 20 per cent received approximately 6 per cent. The figures I quote are for 1969 and had remained practically the same since 1954. You told us that within the last three years you have tripled the amount spent on old age pensions. Has any calculation been made to indicate the impact of that on the distribution of wealth?

Hon. Mr. Lalonde: Old age pensions still represent a comparatively small amount of the whole economy. The universal payment of \$100 goes to all and is taxable. It is not, however, progressive in terms of redistribution of income, as it would be if subject to an income test.

I must mention that the study by the Senate committee was made before the latest tax reform was approved by Parliament. Secondly, the figures do not take into account, as far as I know, the real income or, if you wish, the income received by individuals in terms of service. For instance, the introduction of Medicare and Hospital Insurance has no doubt been of substantial benefit to those in the low and lower-middle income groups.

Senator Benedickson: And those of advanced age.

Hon. Mr. Lalonde: And those of advanced age, obviously. If calculations are made strictly on the basis of the distribution of income based on income tax returns, they do not take into account those developments which have taken place over the last few years. Therefore, while not quarrelling with the figures as they are, which in my opinion are unquestionable, I believe that some caution must be exercised in considering them. There have been certain developments since, and we should and must take into account the services provided on a universal basis in Canadian society.

You raised the more general problem of the redistribution of income. In my opinion, it is really a genuine concern for all parties and politicians in this country that we have not been able to effect a greater degree of redistribution, or a fairer redistribution in our society. There has been in recent years, apart from tax reform, the unemployment insurance program which should contribute to some redistribution for workers and those on comparatively low income. In effect, in the lower income regions in which there is a high degree of unemployment, unemployment insurance has been a substantial benefit.

Then you have to take into account as well the forthcoming family allowance program. There again, I must point out that the family income supplement plan proposed by Mr. Munro—which ultimately did not go through the House of Commons, and was the cause of very much unrest and concern in the Canadian middle class and particularly the upper-middle class circles—was a very highly redistributive plan; but it was quite clear that there was a very high degree of resistance in the country to such a program. The program that I have brought forward is certainly a more generous plan, comparatively speaking, but it is also a more costly one, and I do not make the claim that this plan is more redistributive than the Munro plan. In that sense the Munro proposal—the latest government proposal—was meant to achieve a

greater degree of redistribution. We will probably put the same amount of money, or even more money, in the hands of the poorer people of this country, but only by putting very much more money in the whole pot, because at least we will finally make the family allowances subject to income tax, which will mean that we will recoup a portion of it. Nevertheless, the maximum to be recouped is the maximum tax rate you have in the Income Tax Act at the present time.

So, honourable senators, these are measures that have come into effect since the study made by the Senate Committee on Poverty, and I think we should continue monitoring this type of development to see what we are really achieving in terms of income redistribution.

This is one of the reasons why we have proposed also this social security review with the provinces, because the level of payments being made by the provinces is also a very significant factor in this respect. When you see comparatively wealthy provinces in Canada allocating a comparatively much smaller proportion of their personal income to social assistance, as compared to that of lower income provinces, then you realize that a greater effort could be made at least in some areas of this country. I refer, for instance, to table VII of the working paper on social security in Canada, where you can see that the percentages go all the way from 4.5 per cent in Newfoundland to 1.7 per cent in Ontario. These are the percentages of provincial personal income allocated to social assistance.

The Deputy Chairman: I gather the answer to the question that was asked earlier may be coming now, and we can have it read into the record as part of today's proceedings.

Hon. Mr. Lalonde: I had better read this into the record, Mr. Chairman, because I realize I might have given erroneous information to the committee, for which I wish to apologize.

The \$90 million to \$95 million I have mentioned does not take into account the returns from taxes, and I cannot find out at the present time the average tax rate for the pensioners. So, honourable senators, once again, I apologize for the erroneous information, and I thank Senator Flynn for having raised this question.

The Deputy Chairman: Thank you.

Are there any further questions?

If there are no further questions I shall ask Senator Goldenberg to express our thanks to the minister on behalf of the committee.

Senator Goldenberg: Mr. Chairman, I am pleased to thank the minister on behalf of the committee, and in doing so I want to add a personal note. Not too many years ago I had the privilege of being one of the examiners of the minister's thesis for his Master's degree at the University of Montreal. I gave him an A plus. I am very happy to see that on the basis of his appearance here today he has maintained that high standard.

Hon. Mr. Lalonde: Thank you.

The Deputy Chairman: Shall I report the bill without amendment, or do you wish to take it clause by clause?

I will take a motion then to report the bill.

Senator Smith: I so move.

The Deputy Chairman: Is it agreed that we report the bill without amendment?

Hon. Senators: Agreed.

The committee adjourned.

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First Session—Twenty-ninth Parliament

1973-1974

THE SENATE OF CANADA

STANDING SENATE COMMITTEE
ON

HEALTH, WELFARE AND SCIENCE

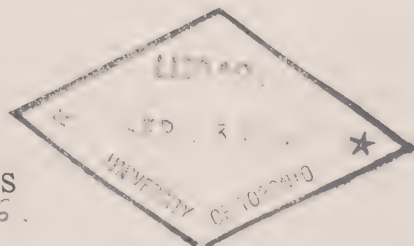
The Honourable MAURICE LAMONTAGNE, P.C., *Chairman*

I N D E X

OF PROCEEDINGS

no. 6.

(Issues Nos. 1 to 5 inclusive)



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INDEX

Andras, Hon. Robert, Minister of Manpower and Immigration

- Bill C-124
- Discussion 1:8-20
- Statement 1:6-8

Argue, Hon. Hazen, Senator (Regina)

- Bill C-147—An Act to amend the Old Age Security Act 3:7-11, 13-8

Beaubien, Hon. Louis-Philippe, Senator (Bedford)

- Bill C-124—An Act to amend the Unemployment Insurance Act, 1971 (No. 1) 1:10

Benidickson, Hon. William M. (Kenora-Rainy River)

- Bill C-219—An Act to amend the Old Age Security Act 5:9-10, 12

Bill C-124—An Act to amend the Unemployment Insurance Act, 1971 (No. 1)

- Purpose 1:6-7
- Report to Senate without amendment 1:4
- Urgency 1:6, 17-8

Bill C-133—An Act to amend the National Housing Act

- Commitments, potential of 1973 capital budget 4:17
- Discussion
 - Clause 4 (Section 8.1): Payment by Corporation prior completion 4:7, 15
 - Clause 7 (Section 15.1): Loans to non-profit corporations 4:6, 9-12
 - Clause 10 (Section 27.1): Selected neighbourhoods—contributions, loans 4:6, 14-5
 - Clause 12
 - (Section 34.1): Rehabilitation loans 4:6-8
 - (Section 34.15): Loans to facilitate home ownership 4:7-9, 15
 - (Section 34.18): Loans or contributions to cooperatives 4:7, 13, 15
 - Clause 15 (Section 39.1): Financing of housing research and community planning 4:7, 11-2
 - Clause 17 (Section 4.2): Loans to provinces, municipalities or public housing agencies 4:7, 13
- Preparation, Consultation 4:6
- Purpose 4:6
- Report to Senate without amendment 4:5
- See also*
 - Central Mortgage and Housing Corporation
 - Housing

Bill C-147—An Act to amend the Old Age Security Act

- Amendment suggested
 - Clause 4 (new): Comfort allowance 3:14
- Purpose 3:6
- Report to Senate without amendment 3:5
- Urgency 3:6, 18
- See also*
 - Old age security

Bill C-148—An Act to amend the War Veterans Allowance Act

- Discussion
 - Clause 2: Personal property limitations 2:13, 15-6
- "Income", "casual earnings", definition 2:20-1
- Purpose 2:6-17
- Report to Senate without amendment 2:5
- See also*
 - War Veterans

Bill C-219—An Act to amend the Old Age Pension Act

- Purpose 5:6, 8-9
- Report to Senate without amendment 5:5
- See also*
 - Old Age Security

Bonnell, Hon. Mark L., Senator (Murray River)

- Bill C-133—An Act to amend the National Housing Act 4:7-9, 14-5
- Bill C-148—An Act to amend the War Veterans Allowance Act 2:8-9, 11-6, 19-21

Bourget, Hon. Maurice, Senator (The Laurentides)

- Bill C-124—An Act to amend the Unemployment Insurance Act, 1971 (No. 1) 1:6
- Bill C-133—An Act to amend the National Housing Act 4:7, 10, 13-4, 18
- Bill C-219—An Act to amend the Old Age Security Act 5:8

Buckwold, Hon. Sidney L., Senator (Saskatoon)

- Bill C-124—An Act to amend the Unemployment Insurance Act, 1971 (No. 1) 1:10, 17, 19

CMHC

- See*
 - Central Mortgage and Housing Corporation

Cafik, Norman A., M.P., Parliamentary Secretary to Minister of National Health and Welfare

- Bill C-147
 - Discussion 3:7-18
 - Statement 3:6

Cameron, Hon. Donald, Senator (Banff)

- Bill C-147—An Act to amend the Old Age Security Act 3:10-1
- Bill C-148—An Act to amend the War Veterans Allowance Act 2:8
- Bill C-219—An Act to amend the Old Age Security Act 5:8

Canada Assistance Plan

- Increase suggested 3:17
- Comfort allowances
 - Jurisdiction 3:8-10, 12-5, 20
 - Rates 3:8-10, 12-3, 15-6, 20
 - Socially active, inactive, Manitoba 3:8
- See also*
 - Old Age Security

Carter, Hon. Chesley W., Senator (The Grand Banks)

Bill C-124—An Act to amend the Unemployment Insurance Act, 1971 (No. 1) 1:9, 14-6, 20

**Carter, Hon. Chesley W., Senator (The Grand Banks)
Deputy Chairman**

Bill C-133—An Act to amend the National Housing Act 4:6-7, 9, 11-6
 Bill C-147—An Act to amend the Old Age Security Act 3:6, 8, 14-5, 17-8
 Bill C-148—An Act to amend the War Veterans Allowance Act 3:6, 8, 14-5, 17-8
 Bill C-219—An Act to amend the Old Age Security Act 5:6, 11-3

Central Mortgage and Housing Corporation

Budget, distribution 4:14, 17-9
 Builder, bankruptcy, recourse 4:7-15
 Cooperative housing 4:7, 13, 15
 Grants
 Individuals 4:7
 Non-profit corporations 4:7, 9-10
 Loans
 Amounts 4:9
 Conditions 4:8-10, 13
 Direct, authority 4:7, 12-3
 Farmers 4:13
 Indians on reservations, Metis 4:7
 Insured lending program 4:12-3
 Interest, term 4:9, 12-3
 Land assembly 4:7, 13-4
 Non-profit corporations 4:9-12

Programs

Assisted Home Ownership 4:7-9, 15, 17
 Neighbourhood Improvement 4:6-7, 14-5, 17
 New Communities 4:7, 15
 Shell housing 4:15
 Low-income people, definition 4:7-8
 Lumber grading 4:8-9
 Prince Edward Island, accomplishments 4:14-5, 18-9
 Rehabilitation, conversion existing housing 4:6-8, 11
 Research, innovative projects 4:7, 11-2
 See also
 Bill C-133
 Housing

Comfort Allowance

See
 Canada Assistance Plan

Cousineau, Guy, Chairman, Unemployment Insurance Commission

Bill C-124 1:8-9, 17-20

Croll, Hon. David A., Senator (Toronto-Spadina)

Bill C-124—An Act to amend the Unemployment Insurance Act, 1971 (No. 1) 1:9, 13, 17-8, 20
 Bill C-147—An Act to amend the Old Age Security Act 3:6-7, 9, 11-2, 14-5, 17-8

Denis, Hon. Azellus, Senator (LaSalle)

Bill C-147—An Act to amend the Old Age Security Act 3:7, 10-1, 16-7

Douglas, J. W., Director, Legal Services, Unemployment Insurance Commission

Bill C-124 1:19

Flynn, Hon. Jacques, Senator (Rougemont)

Bill C-124—An Act to amend the Unemployment Insurance Act, 1971 (No. 1) 1:8-9, 12-8
 Bill C-219—An Act to amend the Old Age Security Act 5:6-8, 10-1

Fournier, Hon. Sarto, Senator (De Lanaudière)

Bill C-147—An Act to amend the Old Age Security Act 3:10, 15
 Bill C-148—An Act to amend the War Veterans Allowance Act 2:9, 11-2

Goldenberg, Hon. H. Carl, Senator (Rigaud)

Bill C-124—An Act to amend the Unemployment Insurance Act, 1971 (No. 1) 1:8
 Bill C-219—An Act to amend the Old Age Security Act 5:12

Grosart, Hon. Allister, Senator (Pickering)

Bill C-124—An Act to amend the Unemployment Insurance Act, 1971 (No. 1) 1:10-4, 17-20

Heath, Hon. Ann H., Senator (Nanaimo-Malaspina)

Bill C-133—An Act to amend the National Housing Act 4:12, 15

Hignett, H. W., President, Central Mortgage and Housing Corporation

Bill C-133
 Discussion 4:8-15
 Statement 4:6-7

Hodgson, J. S., Deputy Minister, Veterans Affairs Dept.

Bill C-148 2:6, 9-10, 12, 15-20

Hospitalization Act

Nursing homes, payments 3:14, 20

Housing

Census statistics 4:11
 Construction cost 4:12
 Indian reserves, Metis 4:7
 Manufactured home 4:11-2
 Non-profit corporations 4:10-2
 Prince Edward Island 4:14-5, 18-9
 Programs
 Community
 Improvement 4:6-7, 14-5
 New 4:7, 14
 Co-operative housing 4:7, 13, 15
 Experimental projects 4:7, 11-2
 Loans
 Assist home ownership 4:7
 Land assembly 4:7, 13
 Non-profit corporations 4:6, 7, 9-12
 Mortgage Insurance Fund protection extension 4:7
 Rehabilitation conversion existing housing 4:6-8
 Unfinished houses 4:15
 See also
 Bill C-133
 Central Housing and Mortgage Corporation

Inman, Hon. J. Elsie, Senator (Murray Harbour)

Bill C-133—An Act to amend the National Housing Act 4:9, 13-4
 Bill C-219—An Act to amend the Old Age Security Act 5:9

Lamontagne, Hon. Maurice, Senator (Inkerman), Committee Chairman

Bill C-124—An Act to amend the Unemployment Insurance Act, 1971 (No. 1) 1:6, 8, 10-2, 14, 17, 19-20

Lalonde, Hon. Marc, Minister of National Health and Welfare

Bill C-219
Discussion 5:7-12
Statement 5:6-7

McElman, Hon. Charles, Senator (Nashwaak Valley)

Bill C-133—An Act to amend the National Housing Act 4:10-2
Bill C-147—An Act to amend the Old Age Security Act 3:9, 12, 16
Bill C-219—An Act to amend the Old Age Security Act 5:10

Martin, Hon. Paul, Senator (Windsor-Walkerville)

Bill C-147—An Act to amend the Old Age Security Act 3:7, 9

National Defence Medical Centre

Hospitalization regulations 2:16-7

National Health and Welfare Department

Social policy, general review 3:7, 10, 15, 17; 5:9, 12

National Housing Act, an Act to amend

See
Bill C-133

O'Brien, Miss N., Director, Legislation and Policy Development and Review, Income Security Branch, National Health and Welfare Dept.

Bill C-147 3:6-7, 9, 18

Old Age Security

Computerization program 3:7
Cost, tripled 5:10-1
Federal-provincial
Discussions 3:8-12, 15-7, 19
Responsibilities 3:8-12; 5:11
GNP percentage 5:10, 11
Guaranteed Income Supplement
Application form, completion 3:6-7, 9, 10, 12
Cost of living increase, quarterly escalation 5:7-8
Pensioner's, spouse younger than 65 3:16-7, 20
Taxation exempt 5:8
Unemployment insurance, income 3:12
Payment increase, excessive rent increase 3:11
Pension
Age lowering 65 to 60, cost 3:8; 5:9
Cheques delivery 5:8
Cost of living increase, quarterly escalation 5:7-8, 11
Equality other groups 5:11
Guaranteed Income Supplement unrelated 3:8
Increase \$200, \$150, cost 3:7-8, 17; 5:9
Pensioner's spouse 60-65 eligibility 3:15, 16-7; 5:9
Recipients, number 1972-3 3:7
Wealth distribution, effect 5:12
Social Security, part of 3:8-9; 5:10, 11
See also
Canada Assistance Plan

Old Age Security, An Act to amend

See
Bill C-147
Bill C-219

Petten, Hon. William John, Senator (Bonavista)

Bill C-148—An Act to amend the War Veterans Allowance Act 2:11-2

Phillips, Hon. Dr. Orville H., Senator (Prince)

Bill C-124—An Act to amend the Unemployment Insurance Act, 1971 (No. 1) 1:14
Bill C-148—An Act to amend the War Veterans Allowance Act 2:6-10, 12, 15-7, 20-1

Reports to the Senate

Bill C-124 1:4
Bill C-133 4:5
Bill C-147 3:5
Bill C-148 2:5
Bill C-219 5:5

Rider, E. J., Director General, Welfare Services, Veterans Affairs Dept.

Bill C-148 2:7-12, 18-20

Smith, Hon. Donald, Senator (Queens-Shelburne)

Bill C-147—An Act to amend the Old Age Security Act 3:10, 14, 16-7
Bill C-148—An Act to amend the War Veterans Allowance Act 2:8-9, 14-5, 22
Bill C-219—An Act to amend the Old Age Security Act 5:6, 13

Social Security

"Bureaucracy", elimination duplication, red tape 3:11
Expenditures, fields, increase 5:10
Guaranteed annual income, Government commitment 3:10-1, 16-7
Jurisdictions, disregard 3:11
Parti Québécois, propositions 5:10
Policy review 3:8-11, 15, 17; 5:9-10, 12

Thompson, Hon. Andrew E., Senator (Dovercourt)

Bill C-124—An Act to amend the Unemployment Insurance Act, 1971 (No. 1) 1:16-7
Bill C-148—An Act to amend the War Veterans Allowance Act 2:7, 10-1, 17-8

Thompson, D. M., Chairman, War Veterans Allowance Board

Bill C-148 2:6-7, 9-11, 13-8, 20-1

Unemployment Insurance

Income Tax revenue 1:20

Unemployment Insurance Act, 1971 (No. 1), An Act to amend

See
Bill C-124

Unemployment Insurance Commission

Monthly statement, annual report 1:12-3

Unemployment Insurance Fund

Administration cost 1:7, 9-10
Advances, government
Amount 1:7, 10, 15

Governor General's warrant 1:13, 19
 Reimbursement 1:10, 18
 Unauthorizable after February 7 1:6, 17-8

Benefits

Paid 1972 1:7
 Regions 1:16
 Ceiling removal 1:6-18
 Deficit 1:10-1
 Employer, accounting method 1:8-9, 15-6
 Employer-employee contributions 1:7-11
 Estimates, forecast 1:7, 12-5, 17
 Government payment 1:7-12
 New entrants 1:10
 Parliamentary control 1:12-4, 17
 Revenue, sources 1:6-7
 Sickness benefits 1:7

VanRoggen, Hon. George C., Senator (Vancouver-Point-Grey)

Bill C-124—An Act to amend the Unemployment Insurance Act, 1971 (No. 1) 1:10-1

Veterans Affairs Department

Expenditures
 Increase 1962-63, 1973 2:8
 1972-73, 1973-74 2:8
 Personnel, number 2:12
 Welfare Officers, number, functions 2:10-2
See also
 National Defence Medical Centre
 War Veterans

Walker, Hon. David J., Senator (Toronto)

Bill C-133—An Act to amend the National Housing Act 4:9-10

War Veterans

Allowance
 Application processing delay 2:15
 Assets, ceiling 2:13-6
 Automatic escalation January 1 2:14
 Cancellation 2:16
 Eligibility 2:8-9, 13-5, 17-8, 20-1
 Old Age Security, Guaranteed Income Supplement, effect 2:6, 17, 19-20
 Provincial social welfare, comparison 2:7
 Recipients 2:9-10
 Allowance disability pension, hospitalization, specific cases 2:14-5
 Assistance Fund 2:7-13, 18-20
 Dependents, medication, assistance 2:7
 Disability pension, delay 2:15
 Domiciliary care 2:19-20
 Hospitalization, treatment rights 2:7, 16-7, 19-20

Number, total, recipients benefits 2:9-10

See also

National Defence Medical Centre
 Veterans Affairs Department

War Veterans Allowance Act, An Act to amend

See

Bill C-148

Welch, Hon. Frank C., Senator (Kings)

Bill C-148—An Act to amend the War Veterans Allowance Act 2:15

Appendices

Issue 3

A—Payments to Nursing Homes under Hospitalization Act 3:20
 B—Comfort allowances and Related Benefits 3:20
 C—Estimated Cost Payment of GIS to Spouses (between ages 60 and 65) of OAS Pensioners in Receipt of GIS 3:20

Issue 4

A—Potential of 1973 Capital Budget for Commitments under New legislation (table) 4:17
 B—Central Mortgage and Housing Corporation 1973 Capital Budget—Commitments (table) 4:18
 C—Central Mortgage and Housing Corporation 1973 Capital Budget—Commitments New Units (table) 4:19

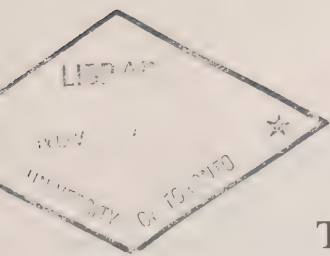
Witnesses

—Andras, Hon. Robert, Minister of Manpower and Immigration
 —Cafk, Norman A., M.P., Parliamentary Secretary to Minister of National Health and Welfare
 —Cousineau, Guy, Chairman, Unemployment Insurance Commission
 —Douglas, J. W., Director of Legal Services, Unemployment Insurance Commission
 —Hignett, H. W., President, Central Mortgage and Housing Corporation
 —Hodgson, J. S., Deputy Minister, Dept. of Veterans Affairs
 —Lalonde, Hon. Marc, Minister of National Health and Welfare
 —O'Brien, Miss N., Director, Legislation and Policy Development and Review (Income Security Branch), Health and Welfare Dept.
 —Rider, E. J., Director General, Welfare Service, Dept. of Veterans Affairs
 —Thompson, D. M., Chairman, War Veterans Allowance Board

For pagination *see* Index in alphabetical order.

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FIRST SESSION—THIRTIETH PARLIAMENT
1974

THE SENATE OF CANADA
PROCEEDINGS OF THE
STANDING SENATE COMMITTEE ON
**HEALTH, WELFARE AND
SCIENCE**

The Honourable D. Smith, *Acting Chairman*

Issue No. 1

THURSDAY, OCTOBER 31st, 1974

**First Proceedings on Bill S-9,
intituled:**

**“An Act to repeal the Proprietary or Patent Medicine Act and to amend the Trade Marks
Act”**

(Witnesses: See Minutes of Proceedings)

THE STANDING SENATE COMMITTEE ON
HEALTH, WELFARE AND SCIENCE

The Honourable C. W. Carter, *Chairman*.

The Honourable M. Lamontagne, P.C., *Deputy Chairman*

The Honourable Senators:

Argue, H.	Goldenberg, H. C.
Bélisle, R.	Inman, F. E.
Blois, F. M.	Lamontagne, M.
Bonnell, M. L.	Langlois, L.
Bourget, M.	Macdonald, J. M.
Cameron, D.	McGrand, F. A.
Carter, C. W.	Neiman, J.
Croll, D. A.	Norrie, M. F.
Denis, A.	*Perrault, R. J.
*Flynn, Jacques	Smith, D.
Fournier, Sarto	Sullivan, J. A.—(20)

**Ex officio* member

(Quorum 5)

Order of Reference

Extract from the Minutes of Proceedings of the Senate of
Tuesday, 22nd October, 1974:

"With leave of the Senate,

The Honourable Senator Sullivan resumed the debate on the motion of the Honourable Senator Bonnell, seconded by the Honourable Senator McGrand, for the second reading of the Bill S-9, intituled: "An Act to repeal the Proprietary or Patent Medicine Act and to amend the Trade Marks Act".

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Langlois moved, seconded by the Honourable Senator Perrault, P.C., that the Bill be referred to the Standing Senate Committee on Health, Welfare and Science.

The question being put on the motion, it was—
Resolved in the affirmative."

ROBERT FORTIER

Clerk of the Senate

Minutes of Proceedings

ATTEST:

Thursday, October 31, 1974.

Pursuant to notice the Standing Senate Committee on Health, Welfare and Science met this day at 10.05 a.m. for consideration of Bill S-9, intituled: "An Act to repeal the Proprietary and Patent Medicine Act and to amend the Trade Marks Act".

Present: The Honourable Senators Belisle, Carter, Denis, Inman, Macdonald, Smith and Sullivan. (7)

Present but not of the Committee: The Honourable Senator Greene.

After discussion, it was *Agreed* that the Honourable Senator Smith be elected Acting Chairman. The organization meeting is to be held immediately after this meeting.

On motion of the Honourable Senator Inman it was ordered that unless and until otherwise ordered by the Committee 800 copies in English and 300 copies in French of its day-to-day proceedings be printed.

Witnesses heard in explanation of the Bill:

Miss Coline Campbell, M.P., Parliamentary Secretary to the Minister of National Health and Welfare Department;

Dr. B. Liston, Acting Assistant Deputy Minister, Health Protection Branch;

Dr. Jean Apse, Chief of Regulatory Affairs Division, Drugs Directorate, Health Protection Branch.

Also heard:

Mr. R. E. Curran, Q.C., Counsel to Proprietary Association of Canada.

After discussion, it was *Agreed* that further consideration of the Bill be postponed to next week.

At 11.35 a.m. the Committee, in conformity with Rule 69, proceeded to the election of a Chairman.

On motion of the Honourable Senator Denis, the Honourable Senator Carter was elected Chairman.

On motion of the Honourable Senator Carter, the Honourable Senator Lamontagne was elected Deputy Chairman. The election of a Steering Committee will be made at the next meeting.

At 11.40 a.m. the Committee adjourned to the call of the Chairman.

Gérard Lemire,
for Patrick J. Savoie,
Clerk of the Committee.

The Standing Senate Committee on Health, Welfare and Science

Evidence

Ottawa, Thursday, October 31, 1974

The Standing Senate Committee on Health, Welfare and Science, to which was referred Bill S-9, to repeal the Proprietary or Patent Medicine Act and to amend the Trade Marks Act, met this day at 10 a.m. to give consideration to the bill.

Senator Donald Smith (*Acting Chairman*) in the Chair.

The Acting Chairman: Honourable senators, we have for consideration Bill S-9, an act to repeal the Proprietary or Patent Medicine Act and to amend the Trade Marks Act. This bill has had second reading in the house and we are now in a position to discuss it in much more detail. I now ask Miss Coline Campbell, who is here to represent the minister, to come forward and make a presentation. Miss Campbell is the Parliamentary Secretary to the Minister of National Health and Welfare, and I am sure you will all join me in wishing her well in her career in Ottawa.

Miss Coline Campbell, M.P., Parliamentary Secretary to the Minister of National Health and Welfare: First of all, Mr. Chairman and honourable senators, I should like to say that the minister regrets that he cannot be here today. He is on his way to Toronto and as of tomorrow will be out of the country. However, there was a prepared text for him, and, if no one objects, I will read it to you now.

Before I do that, however, I should introduce to you Dr. Liston, who is Acting Assistant Deputy Minister, Health Protection Branch, and Dr. Apse, who is Chief of Drugs Regulatory Affairs Division.

In introducing the discussion of Bill S-9 to this committee, I would like to dwell briefly on the purpose behind the repeal of the Proprietary or Patent Medicine Act and the overall effect on Canadian drug regulations.

For a better understanding of the reasons behind the government's intention to repeal the act, permit me to Give you an explanatory statement on where proprietary medicines fit into the Canadian drug market of today.

Drugs are generally divisible into two main categories on the basis of the type of sale: those sold on prescription and those sold without a prescription. Drugs sold without a prescription are called over-the-counter or OTC drugs. Proprietary medicines are a type of OTC drug. Provincial legislation forbids the sale of drugs outside pharmacies but does exempt proprietary medicines from the general prohibition and, therefore, the latter are available in non-pharmacy outlets such as grocery stores and supermarkets. In this discussion, honourable senators, we are concerned with proprietary medicines which are available to the general public in non-pharmacy outlets.

The Proprietary or Patent Medicine Act regulates this type of drug. This act has served the Canadian public well since its introduction in 1908 and has effectively eliminated the nostrum menace existing at the turn of the century.

But now, honourable senators, the time has come when the Proprietary or Patent Medicine Act must be laid to rest. In keeping with the giant strides in medicine and drug technology characteristic of our time, the government must be in a position to respond in proper regulatory fashion as new knowledge about various drugs comes to light. All of you know that the major Canadian drug legislation is the Food and Drugs Act and Regulations. Proper regulatory control can best be accomplished by one statute and one set of regulations to govern non-prescription drugs. The food and drug regulations are being continuously up-dated, thus providing an ideal vehicle to subject all drugs, especially those available to the general public, to a rigorous scientific scrutiny as the needs arise to ensure the supply of safe and effective drugs to all Canadians.

Once the repeal of the Proprietary or Patent Medicine Act becomes effective, proprietary or patent medicines now registered under the PPM Act will be regulated by a new division of the Food and Drug Regulations. These new regulations will retain the best features of the P.P.M. Act and will be subject to the Food and Drug Regulations.

Historically and by statute certain products registered under the P.P.M. Act do not now require a quantitative list of medicinal ingredients on the label. In other words, these ingredients are secret. They are known only to the manufacturer, and to the Health Protection Branch of the Department of National Health and Welfare. Honourable senators, I am sure that you will concur with the government, the medical and pharmacology experts, and the pharmaceutical industry that secrecy in labelling is a relic of the past. Indeed, there may well be some health hazard if an allergic reaction or an accidental poisoning occurs. It should also be remembered that we are in an era of greater consumer awareness and the purchaser should be in a position to know what he is purchasing for his self-medication.

Most importantly, and as I indicated earlier, honourable senators, proprietary medicines will be subject to the Food and Drug Regulations including those not now requiring a quantitative list of medicinal ingredients to be shown on the label. Therefore the secrecy aspect will no longer exist for proprietary medicines.

Before concluding, it might be informative to dwell on the extent of powers provided by the Food and Drugs Act and Regulations. This law contains the wherewithal to regulate almost every aspect of matters pertaining to drugs including advertising, sale, and manufacturing. The powers are very sweeping and the Act contains a regulation-making provision enabling the Governor-in-Council to pass regulations. Once the Proprietary or Patent Medicine Act is repealed, only these regulations will apply to proprietary medicines. The proposed regulations will provide a capacity to review drugs as applications for registration are made, and also during the currency of the registration and when the manufacturer changes the formulation.

In other words, there will be supervision all the way through. Certain drugs will not be permitted in proprietary medicines and these will be listed in a schedule.

Honourable Senators, I think that we can generally say that this new Division in the Food and Drug Regulations will modernize Canadian drug law and at the same time will provide the Canadian public with safer and more effective medicine for the relief of the symptoms of minor ailments.

The Acting Chairman: Honourable senators, I think we can now have questions, directed through the chair, to either Miss Campbell or to Dr. Liston or Dr. Apse.

Miss Campbell: If I may say one thing, Mr. Chairman, I should bring to your attention that we will introduce here a motion to amend the bill, in that clause 3, instead of reading: "This Act shall come into force on the first day of January, 1976," shall read, "This Act shall come into force on a day to be fixed by proclamation." In other words, as we proceed with its discussion you will note that the department's intention is to allow the provinces plenty of time to notify manufacturers as well as others of any changes that are to come about by a tentative date of January, 1976. However, it was felt that leaving the date unspecified afforded the government more leeway. It has definitely been the intention of the department to have the date January, 1976.

The Acting Chairman: Thank you, Miss Campbell. Perhaps one of you two gentlemen would care to make a statement before questions are put to you.

Dr. B. Liston, Acting Assistant Deputy Minister, Health Protection Branch, Department of National Health and Welfare: I do not have a prepared statement, Mr. Chairman. I think the introduction speaks for itself. It is relatively straightforward legislation. If there are some ramifications, I would be very pleased to try to answer questions or clear up difficulties that may arise from this proposed change in legislation.

The Acting Chairman: Thank you. I would like to give the floor first to Senator Sullivan.

Senator Sullivan: Mr. Chairman, before I comment on this legislation I concluded my remarks in replying to the sponsor of the bill in the house, Senator Bonnell, by saying that I commended the legislation. However, I did bring up a few pertinent points and I trust that they can be answered today.

Before going into those, on page 3 of your brief you make this statement:

This law contains the wherewithal to regulate almost every aspect of matters pertaining to drugs including advertising, sale, and manufacturing. The powers are very sweeping and the act contains a regulation-making provision enabling the Governor in Council to pass regulations.

Would you enlarge on that a little, please?

Miss Campbell: I would think that that is in relation to the Food and Drugs Act, which is already in existence.

Senator Sullivan: It can be changed from time to time.

Miss Campbell: I imagine that the regulations under the Food and Drugs Act have been in existence for a while.

Senator Sullivan: Since 1908.

Miss Campbell: You are referring to the proprietary drugs act?

Senator Sullivan: Yes.

Miss Campbell: These regulations would come under the existing Food and Drugs Act.

Senator Sullivan: I realize that. That is all right. In my presentation, as reported at page 155 of the *Debates of the Senate*, I made this statement:

It is to retain the best features of the Proprietary or Patent Medicine Act while discarding those features which are out of date. This is to be accomplished by an as yet unwritten amendment to the Food and Drugs Act...

Have you got that?

Dr. J. Apse, Chief, Drugs Regulatory Affairs Division, Drugs Directorate, Health Protection Branch, Department of National Health and Welfare: Yes.

Senator Sullivan: Let me hear it.

Dr. Liston: It is not envisaged that there is an amendment necessary to the Food and Drugs Act for this particular set of regulations. We already have adequate powers in the Food and Drugs Act to make regulations with respect to proprietary medicines.

Senator Sullivan: That is clear enough. Thank you.

At the bottom of page 155 I said:

It is, however, difficult to assess the total impact of this legislation without knowing the details—

which you have given now

... of the proposed amendments to the Food and Drugs Act...

I think that was a fair question for me to put in my presentation and I think that what you have stated now will help to clarify that point.

Another point I raised was with respect to the continuous scientific review. Who is going to carry out the scientific review?

Dr. Liston: Officers of the Health Protection Branch.

Senator Sullivan: Who are these officers? Can you give me their names?

Dr. Liston: They are under the direction of Dr. C. Scott, who is the Director of that bureau.

Senator Sullivan: Yes, I know that. Has there been any consideration given at all to farming out the tremendous amount of work which the whole field will encompass, without increasing the personnel of the Health Protection Branch? Has there been any idea at all in the department to allocate this type of investigation to the various teaching hospitals and their pharmacy and pharmaceutical divisions?

Dr. Liston: The *modus operandi* of the Health Protection Branch is to seek advice from experts from universities, from industry, from whatever sources we have available to us. We ask for their advice.

Senator Sullivan: And from industry, too?

Dr. Liston: Yes. We have no predisposition to seeking advice from only one source. We have advisory committees

that provide us with a balanced assessment of any drug related problem.

Senator Sullivan: You can see how important that point is with this new legislation, and that is why I emphasized it so much in my presentation.

In the presentation that Dr. Morrison gave in Bermuda in September—and you can tell him this—it was very interesting to realize that he was such a student of Dickens. However, he brought out points which I think were very fair, and which I trust will be incorporated in this legislation, and I emphasize this: if we get responsible, factual, scientifically-based advertising, it should yield several benefits. No. 1, it will provide the consumer with choice; No. 2, it will inform the consumer about availability and use; No. 3, it will ensure that healthy competition exists, and that is important; and, No. 4, it will create economics of a scale which will result in lower prices.

I think that your legislation is going to go far to do that, at least I certainly hope so, but I can also see that you are going to have a terrible problem with these non-prescription drugs. One of my colleagues asked a question in the house the other day, "How is the ordinary Joe on the street going to know, when the non-prescription drugs are labelled, just what they have in them and how long they can keep on taking them?" I know very well from practical experience over the years that there are abuses which happen to these people who keep on buying drugs of that type from pharmacists. The great majority of pharmacists are honest, but some are going to keep on selling these. Do you feel yourself that the enumeration of the contents of that particular product is going to help allay the fears of the medical profession who have to handle these people as a result of over-dosages?

Dr. Liston: Basically, the attempt here is to provide medications which are needed for an individual who has a minor ailment. When the medication has a potential for creating adverse effects, when it is a very potent medication, it would not be incorporated into the proprietary medicines portion of the Food and Drugs Act and Regulations. Schedule F drugs, that is drugs that are normally available only on prescription, would not be available. Those medications which might have a propensity for abuse or which would be additive would be excluded from these proprietary medicines. We are looking at a class of medication that is being made available with the label containing a list of the active ingredients so that if an individual seeking medication for a minor ailment knows at the same time that he is allergic to a certain chemical—because he may have had an unfortunate experience before—then he is in possession of the information to steer himself away from re-exposing himself to that same medication. So the whole question of allergic reactions would be dealt with amongst others.

Senator Sullivan: But how are you going to prevent the continual use of these?

Dr. Liston: The continual abuse, senator?

Senator Sullivan: Yes. I am speaking now of the patients who come to see you and they have taken aspirin, aspirin and more aspirin, or that wonderful thing that dissolves excess stomach acids at all times.

Dr. Liston: We will have a schedule of drugs which are prohibited for inclusion in the class of proprietary medicines so that if there are indications of an abuse situation,

then when the Health Protection Branch people dialogue with the registrar of pharmacies or with the Canadian Medical Association we shall have the ability to have this ingredient listed or scheduled as one of the products not to be sold as a proprietary medicine.

Senator Inman: This may not be pertinent, at all, Mr. Chairman, but it is still a question that I should like to ask. There are many drugs which lose their potency after a certain period of time. I have known cases of people who have had medicine in their home for two or three years and who have still taken it occasionally. Are those medicines still effective at that time?

Dr. Apse: There are requirements in the regulations which provide for an expiry date to be placed on the label of a drug. The buyer should take a look at the date when he buys the drug. But if he has it in his house beyond the expiry date, that does not necessarily mean it has lost its potency, but it is a warning to the consumer that it may have lost its potency. It becomes a rather difficult matter if he has had the drug in his possession for two or three years. But if it has no expiry date marked on it, then it will probably retain its potency for quite a long time. It probably will still be very stable because many of these drugs are of the type that remain stable. For that reason they do not always require an expiry date.

Senator Inman: But if they do require an expiry date, it will be put on?

Dr. Apse: Yes. If they do not put it on, then they are in breach of the regulations.

Senator Macdonald: Mr. Chairman, as I understand it, this act is now being repealed but perhaps those things that are necessary will be brought forward in the regulations and will be retained. Are there draft regulations in effect now, or have you drafted any new regulations?

Dr. Liston: The regulations have been drafted and have been forwarded to the Department of Justice for their review and to ensure that they are in conformity.

Senator Sullivan: But we have not seen them. That was part of one of the first questions I asked.

Dr. Liston: We have not yet received them back from the Department of Justice.

Senator Macdonald: You mentioned that certain ones would be discarded, those that might be additive or subject to abuse. But at the present time is there anything being sold, under the old act, that is dangerous to the public?

Dr. Liston: Drugs that are dangerous to the public are never allowed for sale as a proprietary or patent medicine. Here we are attempting to outline the provisions that would be included in the new section of the Food and Drugs Act so as to provide the same protection, so that there would not suddenly be an expansion in the number of these proprietary medicines which would include any medication which already had a need to be supervised by the health profession, whether pharmacists or physicians.

Senator Macdonald: Dealing with the subject of advertising drugs, I do not know if the Food and Drug people have the right under the act to censor advertising. As you know, some of it is ridiculous, particularly when you see somebody who has a terrible cold and takes a pill and in

five minutes he is better than he has been for years. It does not work that way, I can assure you.

Senator Sullivan: They come on so fast, you cannot see the penalty or the man who got it in the game.

The Acting Chairman: Do I understand your question to be as to whether there would be something done to regulate that form of advertising?

Senator Macdonald: That is right.

The Acting Chairman: And which would indicate that this type of thing is going to be illegal from now on?

Senator Sullivan: But it is not in the bill, senator, it is not in the bill at all. I asked that question in the speech I made.

Dr. Liston: The Department of Health and Welfare is quite concerned over the impact of advertising, some of it being of dubious quality, perhaps; and to that end we have initiated some rather extensive studies with a number of associates at the University of York where they are doing some extensive survey work on a national basis to determine what medications are being used by people in their homes, what medicines they have in their home pharmacies, et cetera. We propose to continue this study. The first aspect was a survey of the number of households to find out just what was there. The second stage of this study is an attempt to determine what led these people to purchase these medicines, whether it was advertising, word of mouth, the advice of a pharmacist or a physician, to try to determine what the role of advertising is and whether in fact it does lead to the over-use of certain classes or types of medication. This is an ongoing study and we anticipate having a completed report sometime before July of next year. This, then, will form the basis for us to look at the amount of control required to try to strike the appropriate balance.

Senator Sullivan: Was there not a comparable study made in the United Kingdom?

Dr. Liston: I am not fully conversant with all the details of that study, senator, but this is the first one being done in Canada. Our regulations or, indeed, our total situation with respect to the use of drugs is not entirely analogous to that of the United Kingdom. We feel it is mandatory that we should have this information before we can move forward with controls and regulations.

Senator Belisle: As a supplementary to that, Mr. Chairman, what will be done with the drugs to be discarded? What procedure is being followed to inform the druggist that he will not be able to continue to sell that particular drug?

Dr. Liston: There is no intention here of prohibiting a manufacturer from continuing to sell his product. It is proposed that basically a manufacturer will have the option of continuing for a period of time offering his product for sale as a proprietary or patent medicine, and as the manufacturer is able to undertake the changes either in labelling or to formulate a request to the Health and Welfare Branch of the Department of National Health and Welfare, he will then be able to come and ask for a certificate or registration which will permit him to continue with his product and offering it for sale as a proprietary medicine. We will receive from the manufacturer some basic information for this registration purpose. If, per-

chance, the formulation has some ingredients in it that are of concern to us because of new knowledge, we shall then have the authority under the Food and Drugs Act to ask the manufacturer for additional information to prove its safety and efficacy. It is only under those circumstances where there is reason to believe that a medicine is harmful or that it may not be effective, or where there is available in the world of literature some evidence of adverse reactions or adverse effects—that we would go in and ask for this continuous review process, and we would seek this additional information. But if we are talking about a relatively harmless preparation which has stood the test of time and has had a beneficial effect with respect to self-medication for coughs or colds or something of that nature, then under those circumstances the manufacturer slides over from a PPM product into a proprietary medicine at the time that he registers his intention to do so with us in the Health Protection Branch.

Senator Macdonald: But he must list the ingredients on the packaging.

Dr. Liston: That is correct.

Senator Macdonald: On that point and looking at the schedule to the present act Senator Sullivan has already mentioned this, and as Senator Bonnell mentioned when he sponsored the bill—I can see that it might be advisable to have the ingredients listed so that if there is an overdose or if there are adverse effects, then a physician will know what to treat the person for. But I have looked at that list and I cannot see where it is of the least benefit to the ordinary layman. Speaking for myself, I cannot even pronounce most of them.

Dr. Liston: The active ingredients must be listed that the manufacturer is including in his product to alleviate a cough or a cold or to act as a laxative or have some sort of beneficial effect. The intention here, as I mentioned before, is that if there are problems of allergies, then this could be dealt with quite easily because the patient would know what he has taken. If there is a case of an overdose or if, for example, a child in the home has taken some of this medication by accident, then at least the physician in the hospital will know from the label what that child has taken and it will be much easier for him to treat the patient or to take the appropriate action. These are some of the benefits.

Senator Macdonald: I can quite see that, but I would point out that you say on page 2 of the statement read to us this morning that:

It should also be remembered that we are in an era of greater consumer awareness and the purchaser should be in a position to know what he is purchasing for his self-medication.

I agree with that, but the list of those drugs with the ingredients contained in them would not make any sense, so far as I can see, to the ordinary layman.

Dr. Liston: But that is a schedule, I believe, of drugs that cannot be offered for sale.

Senator Sullivan: Those are prescription drugs.

Dr. Liston: They may not be offered for sale as proprietary medicines. Those are the prohibitions.

Miss Campbell: Is that list annexed already to the Food and Drugs Act?

Senator Macdonald: It says the Proprietary Medicine Act.

Dr. Liston: You are referring to the existing schedule to the PPM Act.

Senator Macdonald: Yes.

Dr. Liston: These are medications where it is necessary, even mandatory, to list what the active ingredient is. Again it refers to the situation where these medications have a somewhat higher potency or have a more pronounced pharmacological effect, and this is the reason why, basically, it is necessary.

Senator Macdonald: I had in the back of my mind anything, say, on the labelling that would be an explanation of what the ingredients were or what action that product might have, other than simply a listing of the ingredients.

Senator Inman: Mr. Chairman, I would be interested in knowing something about cough medicines. For example, I have a chronic bronchial condition and I have tried almost everything, but some remedies do not have a very good effect. I was wondering about the people who might take too much medicine. For example, if the medicine is supposed to be taken five times a day, they might take it ten times. What do you do about those cases? Some of those medicines are pretty potent.

Dr. Liston: In all proprietary or patent medicines there is a rather extensive review that is undertaken by the Department of National Health and Welfare of the claims that are made for the medication and what it can be utilized for. We review those to make sure that there are not overstatements and so that they are factual. We also review the label and the package inserts to ensure that there is a proper listing of how frequently, the medication may be taken, for what indications and also what contraindications there might be. A person who has a heart condition may be advised not to take a certain type of medication. There is also here what we call globally adequate directions for use. If there is any potential or any possibility of a person who might take twice the amount, since they have twice the amount of cough or whatever, we look at that and we try to build in enough safety so that even if the directions for use are not followed very closely the medication normally does not provide a health hazard. If it is so active that by doubling the dose there would likely be toxic effects or side effects and so on, then it would not be included in the proprietary medicines. It would then likely be an over-the-counter drug which would have to be bought from the pharmacist, so that in those circumstances the pharmacist could start to give some advice. If the individual were coming back repeatedly for a certain proprietary medicine and the frequency seemed to be too high, the pharmacist could tell that individual that it was not advisable. If the medication requires even stronger supervision, then we would place it on a Schedule "F" and it would be prescribed only by a physician.

Senator Inman: Are you telling me that all those cough medicines that are sold over the counter are perfectly safe?

Dr. Liston: Yes. If we had information indicating that they are not safe, they would not be offered for sale.

Senator Sullivan: Unless you take too much and you get sick, senator.

Senator Inman: This is what I am thinking about.

Senator Denis: You have tried them all, and you are still alive!

Senator Macdonald: There is no way you can prevent people from taking more medicine than they should, if they want it. That is so even with prescription drugs. If the prescription says to take one pill every four hours, if you want to you can take the whole boxful of pills.

Senator Sullivan: If you are given a prescription by a qualified physician, he writes the number to take and the intervals at which to take them, and you cannot get more of the prescription without either a further prescription or without the physician informing the pharmacist.

Senator Macdonald: But I am suggesting that you could take the whole prescription at one time if you wanted to. If you give me six pills and I am supposed to take one at a time, there is nothing to prevent my taking all six at the same time.

Senator Sullivan: In that case I would be dealing with a paranoid.

Senator Macdonald: You never know in your practice.

Senator Inman: Of course, if you go to a doctor and he gives you a prescription with instructions and you do not foolow them, then you are being very stupid. But I was thinking more of the things that are sold in trade stores, and they all keep drugs, don't they?

Senator Sullivan: Senator, you and I ave chronic conditions so we would probably be good candidates for acupuncture.

Senator Carter: Mr. Chairman, what is the position of the doctor who may have to prepare his own medicines? I am not sure if doctors still do that now, but it used to be the case in my province, and it is quite conceivable that on the Labrador coast, where there are no drug stores or facilities like that, the doctor would, in making his rounds, be passing out samples at his disposal or would be making up his own prescriptions. In effect, he would become the pharmacist. As I say, I know that doctors used to do this in my own province quite extensively. How does the doctor fit in under this legislation? Does the legislation place any restrictions on him at all?

Dr. Liston: This legislation would not in ny way impinge on or be related to that particular question, because a physician who is treating his patient has the authority or is able to formulate a particular product for an individual under his medical care.

Senator Carter: But the regulations require him to put certain things on the labels and all of that, do they not?

Dr. Liston: No. It is not a medication then that is being offered for sale. You see, that is part of the physician-patient relationship and could not refer to these which are basically commercially available products intended for use actually with the minimum amount of supervision.

Senator Carter: I believe earlier the witness referred to a substance which may have been found to be harmful, and I would like to know who determines and by what means it is determined that a substance is harmful. For example, I recall that a few years ago cyclamates were the rage. They were being put into soft drinks, food and all sorts of things. Suddenly someone in the United States "discovered" that

cyclamates were terrible things, and all of a sudden they were cut off. Now they have "discovered" that that was all wrong and that cyclamates are all right. Who governs these things? Whose criteria do we use, ours or those of the United States? Are we governed by what they find south of the border or do we made up our own minds on the subject?

Dr. Liston: In all situations where there is concern over a particular chemical that is either a drug or a food additive, et cetera, the Health Protection Branch seeks whatever advice there is available anywhere in the world. Sometimes the studies are undertaken in other countries; sometimes they are of such a nature that one must react very quickly to them. On other occasions we judge that it is advisable to undertake further studies in Canada to determine whether in fact the product is toxic or has certain adverse reactions associated with it, in which case we formulate a decision, a course of action predicated on the worldwide knowledge that is available.

We also have other sources of information about toxicity, such as the poison control centres. We have physicians reporting to us an adverse reaction or a toxic reaction, and we utilize their information base to undertake systematic reviews, as they are required, to see if it is necessary to adjust the status of certain medications. A medication may be moved from the proprietary medicines to a schedule. It may be moved to a different provision altogether.

Senator Carter: Let us take a certain substance that might not be much good. It does not do anybody any good, but on the other hand it does not do anybody any harm. For example, take vitamin E. There is quite a controversy about that. A lot of people say it does not do anybody any good. They say, "If you want to take it, go ahead, because it won't do you any harm." So far as I know, I have never come across anything that has proved that vitamin E is harmful. Where do you stand with respect to a substance like that?

Senator Sullivan: Vitamin E has never been proved harmful by anybody.

Dr. Liston: Basically, the ingestion of any chemical which does not have a known benefit has the potential for being accompanied by an associated risk. Our philosophy in this area is to try to develop a risk-benefit ratio.

If we are convinced that there are no benefits . . .

Senator Carter: And no risks.

Dr. Liston: . . . then there certainly can still be some risks associated with it, if it is taken chronologically and so on. Our posture, then, with respect to drugs which are entirely ineffective is that we wish to preclude their being offered for sale. This does not even touch upon the question of fraud here, actually.

Senator Carter: Here again I am asking you whose criteria you use as to whether they are beneficial or not. Good cases can be made on both sides.

Dr. Liston: When there is some controversy of this sort we tend not to utilize the testimonial evidence.

Senator Sullivan: The hearsay.

Dr. Liston: It is possible with respect to many of these proprietary medicines or formulations that are developed by individuals, home remedies and so on, to obtain a great deal of testimonial evidence suggesting that the particular

remedy is a marvellous formulation, that it rejuvenates, et cetera, et cetera. But we make our determinations only by reference to control studies, where we would look at people receiving a placebo or blank form of medication. It is a control study against an individual chemical and then you try to measure, normally, some altered physiological state.

Senator Carter: Do you acknowledge in your department any responsibility to determine the truth or otherwise of the controversy, or are you sitting back waiting for somebody else to carry out control studies?

Dr. Liston: Our philosophy in general is that we place the responsibility or the onus on the manufacturer to provide us with enough evidence to satisfy us that this medication has a certain therapeutic effect, that the claims that he makes for his product are justified on the basis of the studies with which he provides us. If he undertook a very small, limited study but undertakes to make a great variety of claims, then we would not permit this in the information that would accompany such a product. We would have our officers go back to the firm and say, "You have not proven this. You have not shown this to be effective for that indication. You are thus not permitted to make those claims or to advertise it in this way."

Senator Carter: Speaking of advertising, this bill does include advertising, does it not?

Senator Sullivan: No, not yet.

Dr. Liston: The bill itself does not touch upon advertising. I should address myself to this by saying that under the Food and Drugs Act we do have the control of advertising so that, since it is proposed that these proprietary medicines would be included in a specific portion of the regulations under that act, we would then have the control of advertising.

Senator Carter: That comes under the Food and Drugs Act.

Senator Macdonald: They have that under the present act in section 8. It is an offence to give any exaggerated claims, and so on. You have a right to regulate that under the present act.

Dr. Liston: Yes.

Dr. Apse: I believe section 9 of the Food and Drugs Act is almost the same, senator.

Senator Macdonald: One thing bothers me here. You mention in your statement that "certain drugs will not be permitted in proprietary medicines and these will be listed in a schedule." Do you have in mind now such drugs that will not be allowed to be used in proprietary medicines?

Dr. Liston: No. Basically, we are not looking initially here for a major change in those drugs that are permitted or not permitted. Our intention here is to provide the mechanism, and we will develop a schedule of drugs which may not be utilized but would tend to reflect the present situation in large measure.

Senator Sullivan: Mr. Chairman, don't you think, by this means you are attempting to carry out, that you are going to rid the market of a lot of ineffectual, so-called drug preparations? The manufacturers of them are automatically going to quit putting them on the market.

Miss Campbell: People will then see what they are taking.

Senator Sullivan: The manufacturer will just not put them out because people will know about them and will not take them. They should, anyway.

Dr. Liston: This is where this process of continuous review comes in. Basically, if there are no benefits from it then there are risks associated with taking drugs.

Senator Sullivan: Herbal medicines too.

Senator Macdonald: I notice under the old act where they define patent medicines they say those that are not listed in any of the pharmacopoeiae and go on to say

... or upon which is not printed in a conspicuous manner the true formula or list of medicinal ingredients contained in it.

At the present time there are some drugs which do list the ingredients. Would those come under the new regulations also?

Dr. Liston: If I have captured the essence of your question, senator, all medication must have stated on it the active ingredient and the weight per dosage form—whether it is a 25 milligram tablet or capsule—and the intention here is to remove a class of drug which in the past was not obliged to have the active ingredient listed. That is the major impact in this change.

Senator Macdonald: I notice you also mention that the provinces are being consulted in connection with their pharmacy acts too. I can see that it might be advisable to do so, but do you think that it is necessary to do so when you are acting under a federal statute?

Dr. Liston: The consultation with the provinces is primarily to alert the registrars of pharmacies, who have responsibility for the provincial pharmacy acts, to this change because most provincial legislation has a clause which in effect exempts proprietary medicines from being sold only in pharmacy outlets. So this will require some modification of provincial legislation, and it is, amongst other things, one of the reasons why we have had rather expensive consultations with the provincial registrars of pharmacies.

Senator Macdonald: The regulations which you say now being considered by the Department of Justice, do you think they will be available when this bill reaches the committee of the House of Commons? One of their committees will probably go into even greater detail than we have gone into, and I am wondering if they will have the regulations before them at that time.

Dr. Liston: Well, I cannot say when these regulations will be returned to us. All I can say is that we have had them in the mill for a considerable period of time. But they do require some extensive review under the Statutory Instruments Act.

The Acting Chairman: May I ask a question at this stage? How extensive are the regulations now in effect under the act we are presently acting under?

Dr. Liston: The Food and Drugs Act.

The Acting Chairman: It seems to me that they are very extensive and that they would occupy a great deal of space. Furthermore, is this something that is changing from time to time?

Dr. Liston: Yes.

The Acting Chairman: Because there is a question as to what is practical. I am often reminded of the powers that we seem to have to give to departments, and here I mention specifically the Department of Agriculture, for the same good public reasons. It is so often necessary to change them that if you waited to bring regulations back to Parliament in order to amend an act or a schedule to an act, then it would be a pretty cumbersome thing to have to deal with so far as enforcement is concerned.

Dr. Liston: Well, I have here in my hand a copy of the regulations under the food and Drugs Act, and you can see that it is pretty bulky. Obviously, they undergo extensive review because we are always making adjustments as new drugs become available. There is new information on them, information as to interaction between drugs, new types of schedules and new manufacturing and control facilities. There is a tremendous variety of items changed routinely in the course of our efforts to maintain these in a modern and updated state.

The Acting Chairman: I would like to point out too that whenever a change is made, then it must be done by order in council. After that it must be published, so those who are in the trade have access to that information and they are the only ones who can judge whether the change is good or bad. If the change is bad, then they will squeal. I know I would if I were in the position of counsel for the Proprietary Association of Canada.

Senator Sullivan: How long will that period of time be?

Dr. Liston: Depending on the nature of the changes envisaged, and here I am not referring specifically to this bill, but normally we have information letters sent out and we ask for comments. Then, if the changes that we have proposed receive no adverse comment, we go ahead or we modify them if we have had comment on them, and then they are gazetted, this, in turn, provides an additional period of time for comment and for alerting the manufacturing association.

The Acting Chairman: Are there any further questions relating to this bill?

Senator Denis: Coming back to the question asked by Senator Inman as to the length of time during which a product retains its efficacy, it has been said that you should note the date when you buy the drug. But would it not be better if the date of manufacture were stated and also the length of time during which it would be effective? Because even if I note the date I bought the drug, it may still have been on the shelf for two or three months and we have no way of knowing that this drug is no longer effective.

Miss Campbell: I think what has been referred to is the fact that when you go in to buy a drug there is already a date on it to show how long it is good for. In most stores the things you buy, like milk or yoghurt, will have a date marked on them before which they should be sold. In other words, they have a date of efficiency. It has been done for most drugs that I have seen.

Senator Sullivan: It is done on all antibiotics.

The Acting Chairman: It is done on all insulin.

Dr. Liston: May I add that when we examine data received from a manufacturer concerning his product, he must now provide information on the shelf-life or the

stability of the product, and if the product is not stable, then the expiry date that he must put on the label must reflect this lack of stability. The result is that, in general, medications will have this date to suggest that beyond that date it will have lost some of its potency, perhaps, or some of its effectiveness.

Senator Denis: It should be done on every label of every drug.

Senator Inman: What will happen when that date has passed? Will the people selling it take it off the shelves then?

Dr. Liston: For a drug which has an expiry date and when there is concern about its stability or its effectiveness—and the date has been placed on the label—then the manufacturer of that drug will go back to the pharmacy outlets and replace the material so that there is no outdated material left for sale.

Senator Inman: Are you telling me that they will go around to every drugstore in the country?

Dr. Liston: Well, it is illegal to offer for sale a product whose expiry date has passed. So the responsibility is primarily on the manufacturer to remove his product when the expiry date has passed. The Health Protection Branch have drug inspectors who go around and verify that, in fact, products offered for sale have not gone beyond the expiry date. This is a process of verification. We do not check every pharmacy every week or once a month, however. This type of close attention would be impossible, but we do have programs for monitoring to make sure that manufacturers are accepting their corporate responsibility to remove these products as required and as the expiry date is approaching on their products available in pharmacies.

The Acting Chairman: Are there any further questions to be directed to Dr. Liston or Dr. Apse? If not, I would like to get to another part of the discussion which would be to seek the advice of someone who may represent the pharmaceutical industry.

Senator Carter: Before we go on to that, I would like to clarify a point raised by Senator Macdonald with regard to advertising. In connection with advertising relating to a proprietary medicine covered by this act, do you lay charges under this act or under the Food and Drugs Act?

Dr. Liston: In the future, when the Proprietary Medicine section of the Food and Drugs Act is in force, if a manufacturer has registered his product as a proprietary medicine, then we shall lay charges under the Food and Drugs Act and Regulations. If in the interim it is a proprietary medicine and it is labelled as such, then it will have to come under the Proprietary Medicines Act.

Senator Carter: Where do you draw the line between advertising and promotion?

The Acting Chairman: That is a philosophical question.

Dr. Liston: I am not sure I can differentiate between them. Promotion may take the form of a detail man, working for a pharmaceutical manufacturer, who will be promoting a drug by going and visiting physicians and giving them samples of the medication, giving them copies of literature and whatever studies they may have done, and trying to explain for what indications this medication may be used. That is promotion.

Advertising is of a more general nature and can be in the form of having advertising to the health profession placed in Canadian Medical Association journals, or it can be advertising to the general public, in which case we are talking about television advertising and other things of that sort.

Senator Carter: But if a doctor wrote an article about a certain drug that he had used and found useful or valuable, and if that article were used by the manufacturer, would that article be considered as advertising or as promotion?

Dr. Liston: Generally speaking, if a physician has written a case study or a case report as to how he has treated a particular patient . . .

Senator Sullivan: In a recognized journal.

Dr. Liston: . . . in a medical or scientific journal, this is not considered as advertising. He is giving information of a scientific or professional nature. He is saying that he has observed a certain cause and effect. This would not be considered as advertising.

Senator Carter: And if the article were written for a medical journal it would not be considered either as advertising or as promotion. But if another magazine, a current magazine, reproduced the article, what would be the situation then? Would it be advertising or promotion, or what? Could you lay charges under it?

Dr. Liston: It would depend on what claims would be made and how they were phrased. Generally speaking, this would not be permitted advertising. If we were to take the statement of a physician who may have made some claims, some exaggerated claims for what he observed in an individual case, it would not be permissible for him to utilize that and reproduce it as a control study or case study proving the safety or efficacy of the medication. That would not be permitted. I might also add that this just does not occur.

Senator Sullivan: Mr. Chairman, Senator Carter, no reputable scientific journal will take as documentary evidence claims with respect to just one patient or one drug. No reputable doctor would make such claims. He has to carry out a controlled investigation. He is not promoting anything. He is simply giving to the profession at large his findings. He is a recognized man in his field. You can just as well accuse me of being an advertising man, if you want to.

Senator Inman: If I may ask one last question, what do the officials say with respect to drugs containing a large percentage of alcohol? I am thinking, for example, of people who are alcoholics who take these things.

Dr. Liston: Under the Proprietary or Patent Medicine Act there is a limit to the amount of alcohol that can be placed in the formulation. This is done specifically to avoid that sort of abuse. Certainly, when the new regulations are in force under the Food and Drugs Act similar concerns will be taken into consideration, because we will receive information from the manufacturer on what his formulation consists of. If it is 50 per cent alcohol, obviously it will not be permitted—or even much less than 50 per cent, I should say.

The Acting Chairman: I should like to put a question on that point myself. In my earlier days, quite a long time ago, I used to be involved in the drugstore business. In my innocence I was unaware of why people were buying so

much of these preparations for rubbing themselves. I remember very well that there were large quantities of the essence of lemon, the essence of almond and Jamaica ginger, as well as some of the patent medicines which at that time has great "beneficial effect" due to the fact that they had a large percentage of alcohol. What control is there on the essence of lemon, the essence of almond and Jamaica ginger today? Is it a provincial responsibility to see that alcohol is not illegally sold in this guise?

Dr. Liston: If the products are registered under the Proprietary or Patent Medicine Act, or if they are products which would be registered there, then certainly the alcoholic content is controlled. In that respect the alcoholic benefits are no longer available.

Senator Macdonald: Subsection (b) of section 8 covers that.

The Acting Chairman: You have nothing to do with the sale of the essence of lemon, do you? That must come under some other department. It is not a proprietary or patent medicine.

Dr. Liston: If no claims are being made for it that it can remedy a certain situation, it would not come under the Proprietary or Patent Medicine Act.

Senator Sullivan: Mr. Chairman, I do feel that we require an amendment here, but perhaps you would like to wait until we have finished with the bill.

The Chairman: We will deal with that in a moment. In the meanwhile, if we are through asking questions of Dr. Liston and Dr. Apse, perhaps we could hear from Mr. R. E. Curran, who is no stranger around here. Mr. Curran is counsel to the Proprietary Association of Canada. Perhaps Mr. Curran would care to make an opening statement.

Dr. Apse: Mr. Chairman, before Mr. Curran begins his remarks, I should like to point out that he is the dean of the regulations as they presently stand. He has, in the past, done a great deal of work on those regulations. I hope Mr. Curran does not mind my interrupting.

Mr. R. E. Curran, Q.C., Counsel, Proprietary Association of Canada: Mr. Chairman, honourable senators, I am glad to have the opportunity to say a few words in support of this proposed bill. In the first place, I represent the Proprietary Association of Canada, which is probably the oldest trade association in Canada. It represents, I would say, 80 per cent in volume of the proprietary medicines registered under the Proprietary or Patent Medicine Act, which are now being sold. We heartily support the purpose of this legislation. We have for a long time—I think something like 20 years—been advocating a change which would permit the disclosure on the label of the active medicinal ingredients of proprietary medicines. Therefore, we welcome the proposed change which will permit the manufacturers who belong to the association to disclose, with pride, the formulae and the ingredients of their particular products.

Senator Sullivan mentioned something like 2,000 proprietary products. Our association does not represent 2,000. We represent a limited number. However, that limited number constitutes a volume of about 80 to 85 per cent of the volume of proprietary medicines which are presently being sold.

The association has had a long tradition of cooperation with the department. We work closely with the department

and we have had many discussions with respect to the proposed legislation which we heartily support.

I should like to emphasize at this point what Senator Sullivan has said. We have not yet seen the regulations and are therefore only going on the basis of what we have been told, namely, that this will encompass the best features of the present legislation and permit the registration of products which traditionally have been registerable through the Proprietary or Patent Medicine Act.

The changeover, of course, will be to transfer registration to a different act, the Food and Drugs Act, and we welcome that opportunity to comply with the regulations which we assume will provide for the mechanism of registration, the supervision of the formulation and of the claims.

I think there is one point I should emphasize here, that in seeking registration even under the Proprietary or Patent Medicine Act the manufacturer subjects himself to preclearance of his formula and of the claims which can be made for his product. His packaging has to be approved, his labelling has to be approved and his advertising has to be approved.

The Proprietary Association of Canada recently formulated a guide of advertising practices which has been endorsed by the department as constituting a step forward in more effective control of drug advertising to the general public. I think it is appropriate to mention that, and to emphasize the reputation and reliability of the association in trying to protect the public with safe and effective medicines for self-medication and self-diagnosis.

I do not think I need to make any point about the value of self-medication. It is endorsed by all the medical professions around the world because, without self-medication the strain on the health resources team would be an intolerable one. The point is that proprietary medicines are advertised for the symptomatic relief of minor ailments, and very great care is exercised in the department to make sure that it is only products related to minor ailments and symptomatic relief which are permitted to be registered and sold.

Under the present law the products which are registered are sold subject to an annual licence, and that licence, of course, can be revoked or not renewed. So there is absolute control over the various products which are being offered to the public.

We are assuming that much the same principle will apply under the new legislation. Therefore, we have no fears, even though we have not seen it, that the legislation will not prove to have a workable set of regulations and further the aims and objects of the association in providing to the public safe effective medications for the treatment of minor and symptomatic ailments.

I was very glad that Miss Campbell suggested an amendment to bring the bill into force by proclamation.

Miss Campbell: May I just point out, Mr. Chairman, that there is still some discussion going on with respect to the exact wording of that proposed amendment and whether it should or should not be by proclamation. We are just waiting for word on that very point now.

Mr. Curran: Mr. Chairman, our preference would certainly be for proclamation, for a very good economic reason. The proposal, which we have not seen yet, involves virtually the complete re-tooling of the proprietary medi-

cine industry. It means that all of the products which are now registered and which will be registered, will have to be re-packaged and re-labelled, and with the present shortage of essential packaging materials—bottles, cardboard cartons, and so on—and with printing and art work, because all the labelling will have to be redesigned with new art work, this presents a great many difficulties. Believe me, from my experience and the experience of others in the industry, while a year may seem quite a long way off it is by no means a long way off when you come to a complete re-tooling such as will be required here. Of course, we are also anxious for economic reasons to avoid wastage of packaging materials. For the last year or so, since the energy crisis situation developed, the manufacturers of proprietary medicines have had to order more than ample supplies, because you can no longer depend on a local order on a short-term basis. The industry is perhaps overloaded in certain respects with inventories of products which comply with the Proprietary or Patent Medicine Act now, but on the date that this bill becomes effective those labels and cartons will be obsolete.

I will not get into the question of whether they can be legally sold, but there will be a great deal of obsolescence in terms of present stocks of materials which have been labelled and which have been sold in conformity with the Proprietary or Patent Medicine Act.

It was indicated to us today that there would be no substantial change in the control, except under a different act, of the class of products which have been registerable in the past. I think it is most important to keep in mind the length of time, the lead time, which is required. I can assure you that the association will not drag its heels on conforming to the new legislation. It is our desire that we should bring ourselves under that with the utmost speed. However, there may be physical difficulties through shortages of supplies and materials which will make it very difficult to comply.

There is one other factor which perhaps is relevant, although not as important at the moment, and that is the fact that all of the provinces will need to pass amending legislation to provide for the changeover and the continuous sale of such products in non-drug store outlets. We can hardly dictate the speed at which the provinces will move. We are hoping that maybe January 1 will be a good date for that purpose, but, on the other hand, it may be that a particular province, for its own particular reasons, will not have been able to amend its legislation by that time. If that were the case, it would create great disruptions in the industry, to say nothing of public inconvenience, if people are no longer permitted to buy certain stock products which they have traditionally been able to buy in non-drug store outlets.

If I may say so, honourable senators, I have submitted to the clerk a form of amendment which would provide for the bill to come into force on the basis of a proclamation, but, as Miss Campbell has pointed out, there will be further discussion on this point. As I have indicated, our preference would be for that procedure, but if a more extensive date were suggested, then we would certainly want to consider that to see if it is realistic in terms of our ability to conform to the changeover contemplated by the regulations.

The Acting Chairman: Mr. Curran, is this the last point that you are interested in? If it is not, then please tell me, because I would like to suggest to you that there is still confusion between the Department of National Health and

Welfare and the Department of Justice as to the appropriate amendment. It is still in a fluid condition. The departmental officials were hoping that this would have been cleared up before the meeting this morning, but it has not been.

So I am going to suggest to the committee, since you have your case on the record now, and I am sure it has been listened to very carefully, that we postpone further consideration of the bill itself until some time next week, and ample notice will be given as to the date, at which time we will be in a position to have a combined judgment of the departmental officials on this point. So, is it agreed, honourable senators, that we postpone consideration of the bill until the next meeting of the committee?

Hon. Senators: Agreed.

The Acting Chairman: Thank you very much, gentlemen.

Senator Denis: Mr. Chairman, before we adjourn may I revert to the item related to the nomination of a permanent chairman? I would be very happy to have you as chairman, because you have done a very good job. I have a good suggestion. I know an able senator who is willing to accept that position, and so I want to nominate Senator Carter, who would be willing to assume those responsibilities.

The Acting Chairman: Honourable senators, you have heard the motion of Senator Denis. Is it agreed that Senator Carter be elected chairman of this committee?

Hon. Senators: Agreed.

The Acting Chairman: There is another matter I have on my mind. It is the practice to elect a deputy chairman, and perhaps Senator Carter would have some suggestions in this regard.

Senator Carter: I would like to nominate Senator Lamontagne as deputy chairman. As you know, he has been chairman of this committee for several years now but he is also chairman of the Special Senate Committee on Science Policy. The Science Policy Committee is going to be very, very busy this year and I understand that this committee will also be very busy because of the number of pieces of legislation to come before us. It is expected that we will also have before us legislation arising out of science policy, and I think Senator Lamontagne would be the appropriate person to preside over its consideration.

The Acting Chairman: Is it agreed, honourable senators?

Hon. Senators: Agreed.

The Acting Chairman: Just one other matter. May I suggest, therefore, that we leave it to the chairman to consult with the whips on both sides of the house with regard to the nominating of a steering committee?

Hon. Senators: Agreed.

Senator Denis: And I hope you will not arrange meetings for the same time as the meetings of other committees where the same senators are members of both committees.

The Acting Chairman: I think Senator Macdonald should consult with his opposite number on that because I think it is a very serious situation.

The committee adjourned.



FIRST SESSION—THIRTIETH PARLIAMENT

1974

THE SENATE OF CANADA
PROCEEDINGS OF THE
STANDING SENATE COMMITTEE ON
**HEALTH, WELFARE
AND SCIENCE**

The Honourable C. W. CARTER, *Chairman*

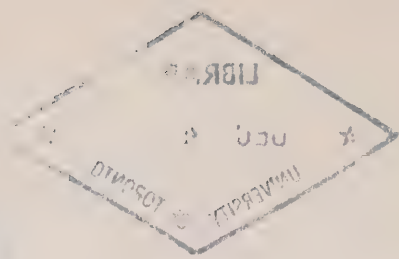
Issue No. 2

THURSDAY, NOVEMBER 7, 1974

Second and Last Proceedings on Bill S-9,
intituled:

"An Act to repeal the Proprietary or Patent Medicine Act
and to amend the Trade Marks Act"

(Witnesses—See Minutes of Proceedings)



THE STANDING SENATE COMMITTEE ON
HEALTH, WELFARE AND SCIENCE

The Honourable C. W. Carter, *Chairman*.

The Honourable M. Lamontagne, P.C.,
Deputy Chairman.

and

The Honourable Senators:

Argue, H.	Goldenberg, H. C.
Bélisle, R.	Inman, F. E.
Blois, F. M.	Langlois, L.
Bonnell, M. L.	Macdonald, J. M.
Bourget, M.	McGrand, F. A.
Cameron, D.	Neiman, J.
Croll, D. A.	Norrie, M. F.
Denis, A.	*Perrault, R. J.
*Flynn, J.	Smith, D.
Fournier, S.	Sullivan, J. A.—(20)
(de Lanaudière)	

**Ex officio* member

(Quorum 5)

Order of Reference

Extract from the Minutes of Proceedings of the Senate
of Tuesday, 22nd October, 1974:

"With leave of the Senate,

The Honourable Senator Sullivan resumed the debate on the motion of the Honourable Senator Bonnell, seconded by the Honourable Senator McGrand, for the second reading of the Bill S-9, intituled: "An Act to repeal the Proprietary or Patent Medicine Act and to amend the Trade Marks Act".

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Langlois moved, seconded by the Honourable Senator Perrault, P.C., that the Bill be referred to the Standing Senate Committee on Health, Welfare and Science.

The question being put on the motion, it was—

Resolved in the affirmative."

ROBERT FORTIER,

Clerk of the Senate.

Minutes of Proceedings

Thursday, November 7, 1974.

(2)

Pursuant to adjournment and notice the Standing Senate Committee on Health, Welfare and Science met this day at 9.40 a.m. for further consideration of Bill S-9, intituled: "An Act to repeal the Proprietary or Patent Medicine Act and to amend the Trade Marks Act".

Present: The Honourable Senators Carter (*Chairman*), Denis, Inman, McGrand and Neiman. (5)

The following witnesses were heard in explanation of the Bill:

Miss Coline Campbell, M.P.,
Parliamentary Secretary to the Minister of
National Health and Welfare;

Dr. B. Liston, Acting Assistant Deputy Minister,
Health Protection Branch,
Department of National Health and Welfare;

Also heard:

Mr. R. E. Curran, Q.C.,
Counsel to Proprietary Association of Canada.

In attendance:

Dr. Jan Apse, Chief of Regulatory Affairs Division,
Drugs Directorate, Health Protective Branch,
Department of National Health and Welfare.

Upon motion of the Honourable Senator Denis, it was *Resolved* to amend the Bill as follows:

Page 1: Strike out clause 3 and substitute therefor the following:

"3. This Act shall come into force on the first day of July, 1976".

On motion duly put it was *Resolved* to report the said Bill as amended.

At 10.50 the Committee adjourned to the call of the Chair.

ATTEST:

Patrick J. Savoie,
Clerk of the Committee.

Report of the Committee

Thursday, November 7, 1974.

The Standing Senate Committee on Health, Welfare and Science to which was referred Bill S-9, intituled: "An Act to repeal the Proprietary or Patent Medicine Act and to amend the Trade Marks Act" has, in obedience to the order of reference of Tuesday, October 22, 1974, examined the said Bill and now reports the same with the following amendment:

Page 1: Strike out clause 3 and substitute therefor the following:

"3. This Act shall come into force on the first day of July, 1976."

Respectfully submitted.

Chesley W. Carter,
Chairman.

The Standing Senate Committee on Health, Welfare and Science

Evidence

Ottawa, Thursday, November 7, 1974

The Standing Senate Committee on Health, Welfare and Science, to which was referred Bill S-9, an Act to repeal the Proprietary or Patent Medicine Act and to amend the Trade Marks Act, met this day at 9.40 a.m. to give further consideration to the bill.

Senator Chesley W. Carier (*Chairman*) in the Chair.

The Chairman: Honourable senators, I see a quorum, so now we can get down to business.

Senator Denis: Mr. Chairman, before we start, would it be possible to have someone, either the clerk of the committee or the chairman of the committee, look into the names of those who are members of the committee? I say that because there are members of this committee who also belong to one or more other committees and at times it is hard to get a quorum, particularly if you have two or more committees meeting at the same time. We have to choose one or other committee, and then you find that one committee is lacking a quorum. Therefore I wonder if more care could be taken when setting down the times of committee sittings so as to facilitate those senators who are members, as I said, of two or more committees. Perhaps one committee could be set down for a time that is an hour later than the other.

The Chairman: I quite agree that there should be more co-ordination in timing the sittings of committees. At the present time nearly every senator is on three or four committees.

Senator Denis: I know one senator who is a member of five committees.

The Chairman: I do not think that can be avoided altogether, particularly where our Conservative colleagues are concerned because they have such a small number. Each one of them has to serve on quite a number of committees. But I agree that there certainly should be better co-ordination so far as timing is concerned. However, I would point out that this morning is rather an exception because, as you know, the Immigration bill was delayed much longer than was necessary, and we thought that consideration of this present bill would be completed at our last meeting. The result is that we are now sitting this morning and we are faced with the problem of trying to report these bills back before the end of this week. That has left everything piled up until this morning.

Anyway, honourable senators, I gather that this meeting will not be very long because we have before us Bill S-9, which was discussed thoroughly at the last meeting and then was left over mainly for the purpose of considering a proposed amendment.

We have with us this morning Miss Coline Campbell, representing the ministry, and I am going to ask her to introduce her staff in case there are some senators here this morning who were not here at the last meeting. I shall also ask her to explain the amendment.

Miss Coline Campbell, M.P., Parliamentary Secretary to the Minister of National Health and Welfare: Honourable senators, I have two gentlemen from the department with me this morning, Dr. Liston and Dr. Apse. They were here last week.

If I may I should like to give you a very brief summary of what happened last week.

This is a bill to repeal the Proprietary or Patent Medicine Act and to amend the Trade Marks Act, and what it is really doing is simply transferring everything that was in the Proprietary or Patent Medicine Act over to the Food and Drugs Act so that there will be a greater element of control. That is to say that all the ingredients of proprietary medicines would be known to the public. In other words, it is forcing the manufacturers of these medicines to have somewhere on the labels, and by a certain date, the contents or the ingredients of the medicine.

I do not really want to go into it in detail again, but there is nothing new except for the disclosure. Here I am of course referring to over-the-counter drugs, drugs that are sold either from a shelf in the grocery store or in the drugstore but which are non-prescription drugs.

The reason we got bogged down at the last meeting was that we wanted to present an amendment to the Senate committee so as to avoid, perhaps, having to come back later to the Senate for this amendment. It was very kind of your chairman to allow us to meet again today on that proposal.

The amendment would be to clause 3 of the bill, and instead of:

3. This Act shall come into force on the first day of January, 1976.

we should like to substitute:

3. This Act shall come into force on the first day of July, 1976.

The Chairman: You are just substituting "the first day of July" for "the first day of January".

Miss Campbell: Yes.

Senator Denis: Mr. Chairman, should we proceed clause by clause? We heard the witnesses in detail at the last meeting, so I suggest that we proceed clause by clause. I do not think we need to hear further from the witnesses.

The Chairman: We have another witness with us this morning who was also with us at our last meeting, and that is Mr. Curran, counsel to the Proprietary Association of Canada.

Mr. Curran, do you have anything you wish to say at this stage?

Mr. R. E. Curran, Q.C., Counsel, Proprietary Association of Canada: Mr. Chairman, I should like to say a few words, if I might be permitted to do so.

When I was here last week I indicated the support of the association for the purposes of this bill. However, we have not as yet seen the regulations, and we are assuming that, as Miss Campbell points out, the regulations will simply be concerned with the transfer from one regime to another for the purpose of registration only under the Food and Drugs Act rather than under the Proprietary or Patent Medicine Act. In fact, our association has been anxious that this should be done and we therefore heartily support the purpose of the legislation.

The point, however, I wish to address myself to this morning relates to the effective date of the coming into force. I pointed out last week the rather gigantic problem involved in the preparation of all new labels. There are something like 2,000 proprietary products now registered, and all of those will have to be re-registered and brand new labels will have to be printed. It is very difficult to predict exactly now what effect the energy crisis, if there is one, will have on the situation so far as the change-over to new labels is concerned. It means new art work, new packaging materials and maybe new containers—there are a whole lot of things that have to be done; and while we would do our utmost to meet the July 1st date we feel it is a little on the tight side because of the many things over which we have no control and which make it difficult for the association to make an orderly change-over. We therefore hoped that a later date might be proposed such as, perhaps, the end of September. We do not think that this would present any problem to the department; in fact it might help the department, to have a little extra time. Therefore our preference would be for a date “on proclamation”, which would give us the comforting time we need. However, if a fixed date is to be recommended, then I would strongly suggest that the date be somewhat later than July 1st.

Frankly, we do not see why there is this fixed date of such short duration. It may seem to be a long time, but where industry is concerned it is a not a long time when you consider the problems involved in preparing all new labels. It is a retooling job, if I may say so. Some years ago when the new labelling regulations were introduced for the food industry, two years were given for the change-over. That was in the Packaging and Labelling Act. We think that is a more reasonable period of time, and if the date were fixed at, say, September 30th we would feel that the extra three months would be of great value to the association in dealing with this problem.

I should also point out that it is the custom in Canada for many industries to close down their plants for a couple of weeks or three weeks during the summertime, so there would be six weeks taken out of the period if that should happen. There is also the problem of possible strikes and labour upsets, and all we want to do is to be on the safe side so that we can have an orderly change-over and not be crowded out at the last minute and find

ourselves faced with a situation over which neither we nor the government has control.

That is the whole purpose of my presentation, Mr. Chairman. We would strongly prefer a later date for the reasons I have indicated. I want to make it quite clear again that we are not at loggerheads in any way with the representatives; it is simply a matter of working out what is, in our view, best to effect an orderly transition, and I think the department should heed the advice of industry because they are the ones who have had most experience and have the greater problems to contend with. That is the reason I would ask for a later date, if somebody would be prepared to support that.

I do not think I need say any more, Mr. Chairman, but if there are any questions I would be glad to answer them.

The Chairman: Thank you, Mr. Curran. Have you a reply to that, Miss Campbell?

Miss Campbell: Perhaps Dr. Liston would answer that.

Dr. B. Liston, Acting Assistant Deputy Minister, Health Protection Branch, Department of National Health and Welfare: Thank you, Mr. Chairman. We have had, obviously, some extensive dialogue with the manufacturing industries involved, and we have discussed some alternative proposals with regard to time. All of these discussions were predicated on when it would be feasible to implement these changes, and it was indicated to us that anything less than 18 months would have created some very serious problems; but I believe that in our more formal discussions with the Pharmaceutical Association of Canada it was indicated to us that 18 months would be a date, which would, although tight, provide adequate lead time for these changes in labels. We submit that the industry has had some discussions with the Health Protection Branch. These were held, I think—and correct me, Mr. Curran, if I am wrong—in September of this year; so that there has been general knowledge that this change was coming. We therefore feel that although the specifics of the regulations are perhaps not known to the industry at this point in time, they have been alerted to the fact that there will be some changes required.

We would hope that the regulations would be in place by late 1974, or at the very beginning of 1975, and with this element of contact that has occurred, plus the 18 months for the transition period, we feel that this would probably provide adequate time for the manufacturing industry to make these changes.

Mr. Curran: Mr. Chairman, may I just add a point here? The suggestion of 18 months as being the minimum time that we require was submitted to Dr. Liston. Since that time we have made a short survey in the industry of the people who will be most affected, namely, those who have the most products, and they will have the biggest problem in the change-over. Their indication to us was that a longer lead time would be very comforting, for reasons which I think are self-apparent, and so that is the only purpose I have in speaking the second time, namely, because we did at one time indicate 18 months. Since then, however, many of our members have indicated that they would very strongly prefer a little longer time for safety purposes, and to avoid any wastage of present packages. The time will come when these things are obsolete on the shelf, and there could be a heavy

wastage of materials. We are anxious to avoid wastage if we can.

Senator Inman: So in the meantime we buy the ones that do not have the ingredients marked on them.

Senator Denis: I suggest that we proceed with the bill clause by clause.

The Chairman: Shall clause 1 carry?

Honourable Senators: Carried.

The Chairman: Shall clause 2 carry?

Honourable Senators: Carried.

The Chairman: Shall clause 3 carry?

Senator Denis: Mr. Chairman, I move:

That Bill S-9, An Act to repeal the Proprietary or Patent Medicine Act and to amend the Trade Marks Act, be amended by striking out clause 3 thereof and substituting therefor the following:

"3. This Act shall come into force on the first day of July, 1976."

Senator Inman: I second that.

The Chairman: The amendment is now open for discussion.

I would like to ask Dr. Liston a question. You say you consulted the industry. Mr. Curran says he represents the association. Does the association include all the industry, or were your consultations with the association?

Dr. Liston: Our consultations were with the association, basically.

The Chairman: Another question. Is there any particular objection to having this act come into force on

proclamation, rather than on a specific date? What is the reasoning behind that?

Miss Campbell: I think I can answer that, Mr. Chairman. It is just that we wanted a definite date on this so that everybody would know what it was, and so that there would be no fooling around and extending it beyond that date.

The Chairman: I take it, if the industry can show that we are asking them to do something impossible, then this date can be changed later by amendment.

Miss Campbell: Yes.

The Chairman: Are there any further questions?

The amendment is:

3. This Act shall come into force on the first day of July, 1976.

All in favour?

Honourable Senators: Carried.

The Chairman: Shall the title carry?

Honourable Senators: Carried.

The Chairman: Shall I report the bill as amended?

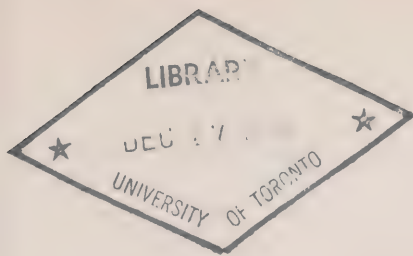
Honourable Senators: Agreed.

The Chairman: It is agreed that we report the bill as amended.

Miss Campbell: Mr. Chairman, I would just like to say thank you very much for taking this extra time and meeting again today for us.

The Chairman: Thank you very much for coming here and answering our questions.

The committee adjourned.



Government
Publications

FIRST SESSION—THIRTIETH PARLIAMENT
1974

THE SENATE OF CANADA
PROCEEDINGS OF THE
STANDING SENATE COMMITTEE ON
**HEALTH, WELFARE
AND SCIENCE**

The Honourable C. W. CARTER, *Chairman*

Issue No. 3

TUESDAY, NOVEMBER 19, 1974

Complete Proceedings on Bill C-4, intituled:

**“An Act to amend the War Veterans Allowances Act and the
Civilian War Pensions and Allowances Act”**

REPORT OF THE COMMITTEE

(Witnesses: See Minutes of Proceedings)



THE STANDING SENATE COMMITTEE ON
HEALTH, WELFARE AND SCIENCE

The Honourable C. W. Carter, *Chairman*.

The Honourable M. Lamontagne, P.C.,
Deputy Chairman.

and

The Honourable Senators:

Argue, H.	Goldenberg, H. C.
Blois, F. M.	Inman, F. E.
Bonnell, M. L.	Langlois, L.
Bourget, M.	Macdonald, J. M.
Cameron, D.	McGrand, F. A.
Choquette, L.	Neiman, J.
Croll, D. A.	Norrie, M. F.
Denis, A.	*Perrault
*Flynn, J.	Smith, D.
Fournier, S.	Sullivan, J. A.—(20)
(de Lanaudière)	

**Ex officio* member

(Quorum 5)

Order of Reference

Extract from the Minutes of Proceedings of the Senate of
Tuesday, November 19, 1974:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Lang, seconded by the Honourable Senator Cook, for the second reading of the Bill C-4, intituled: "An Act to amend the War Veterans Allowance Act and the Civilian War Pensions and Allowances Act".

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Langlois moved, seconded by the Honourable Senator Carter, that the Bill be referred to the Standing Senate Committee on Health, Welfare and Science.

The question being put on the motion, it was—
Resolved in the affirmative."

ROBERT FORTIER,
Clerk of the Senate.

Minutes of Proceedings

Tuesday, November 19, 1974

Pursuant to adjournment and notice the Standing Senate Committee on Health, Welfare and Science met this day at 3.25 p.m.

Present: The Honourable Senators Argue, Blois, Carter (*Chairman*), Choquette, Croll, Denis, Fournier, Inman, Langlois, Macdonald, McGrand, Neiman and Norrie. (13)

Present but not of the Committee: The Honourable Senators Bélisle, Benidickson, Fournier, Prowse and Quart. (5)

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

The Committee proceeded to the consideration of Bill C-4, "An Act to amend the War Veterans Allowance Act and the Civilian War Pensions and Allowances Act".

The following witnesses were heard in explanation of the Bill:

Mr. H. Hanmer, Director,
Service Bureau,
Royal Canadian Legion; and
Mr. D. M. Thompson, Chairman,
War Veterans Allowance Board.

On motion of the Honourable Senator Bélisle it was *Resolved* to report the Bill without amendment.

At 4.15 p.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Patrick J. Savoie,
Clerk of the Committee.

Report of the Committee

Tuesday, November 19, 1974.

The Standing Senate Committee on Health, Welfare and Science to which was referred Bill C-4, intituled: "An Act to amend the War Veterans Allowance Act and the Civilian War Pensions and Allowances Act" has, in obedience to the order of reference of Tuesday, November 19, 1974, examined the said Bill and now reports the same without amendment.

Respectfully submitted.

Chesley W. Carter,
Chairman.

The Standing Senate Committee on Health, Welfare and Science

Evidence

Ottawa, Tuesday, November 19, 1974

The Standing Senate Committee on Health, Welfare and Science, to which was referred Bill C-4, to amend the War Veterans Allowance Act and the Civilian War Pensions and Allowances Act, met this day at 3.25 p.m. to give consideration to the bill.

Senator Chesley W. Carter (*Chairman*) in the Chair.

The Chairman: Honourable senators, we have just had referred to us Bill C-4, an Act to amend the War Veterans Allowance Act and the Civilian War Pensions and Allowances Act. We have with us this afternoon from the War Veterans Allowance Board: Mr. Don Thompson, Chairman; Mr. J. U. Doucet, Deputy-Chairman; Mr. J. P. Gagné, Executive Director of Operations; and Mr. E. Keenleyside, Chief, Finance and Administration. Also with us today is my old friend Mr. Bert Hanmer, the Director, Service Bureau, Royal Canadian Legion.

Honourable senators, on November 18 I received a letter from Mr. Hanmer which sets forth the position of the Legion with respect to this bill. I think it would save time if I simply read the letter into the record. We could then hear from Mr. Hanmer if he wishes to make any supplementary remarks, and we could then proceed with the questioning. Is that agreeable?

Hon. Senators: Agreed.

The Chairman: Mr. Hanmer's letter is addressed to me as Chairman of the Standing Senate Committee on Health, Welfare and Science and refers to Bill C-4, an Act to amend the War Veterans Allowance Act and the Civilian War Pensions and Allowances Act. The text of the letter reads as follows:

Dear Senator Carter:

The Royal Canadian Legion welcomes Bill C-4, which is presently under consideration by the Senate.

The amendments included in this Bill will effect improvements in the legislation which our Organization has previously sought, namely:

1. quarterly escalation based on the Consumer Price Index, rather than annual escalation;
2. basing of the escalation on the permissive income ceilings, instead of on the rate of allowances;
3. recognition of a child of a widow or widower attending an educational institution up to age 25, and
4. allowances for the children of recipients—this amendment is particularly welcome.

We note other changes in Bill C-4 involving equality of status between male and female veterans. These we feel sure will also be well received.

The Royal Canadian Legion does not wish to delay passage of this Bill but we would like to place on record a number of other improvements which we would like to see enacted soon.

1. *Establishment of a Single Scale of Income*

Currently there exists a variety of income levels for recipients of the Allowance. For example:

—a single veteran under 65 years who has no income but Veterans Allowance, will receive, when the new legislation becomes law, a monthly rate of \$183.66 effective 1 October 1974;

—a single veteran who has some income from other sources, such as disability pension, and who still qualifies for War Veterans Allowance, may have a monthly total of up to \$238.66;

—a single veteran over 65 and qualified for Old Age Security will receive \$238.66.

The Royal Canadian Legion would like to see everyone treated the same and the level for all single recipients set at the figure of \$238.66 (The comparable figure for married veterans would be \$412.90.)

The Assistance Fund is available to supplement the recipient's income when it is at the lowest level, if need can be established on the basis of a prescribed formula. This provision would become unnecessary with the establishment of the standard scale of income.

2. *Removal of the Canadian Residence Requirement for Qualified Applicants Living Abroad*

Currently Canadian veterans living out of Canada can only qualify for benefits by returning to this country for one year and then subsequently leaving while a recipient of benefits. Those residing out of Canada feel that this arrangement does not properly acknowledge their wartime contributions to this country.

The Royal Canadian Legion believes that otherwise qualified persons should not be ineligible because of residence out of Canada.

3. *Qualifying Service in the United Kingdom in World War I*

An otherwise qualified veteran must have served in the United Kingdom for 365 days prior to 12 November 1918. Such veterans feel let down by the failure of the Government to recognize their willingness to serve overseas during hostilities.

The Royal Canadian Legion believes that in view of the advanced years of the majority of these veterans, they should now be treated in exactly the same fashion as those who volunteered for overseas service in World War II. This would mean recognizing any service in

the United Kingdom before 12 November 1918 as qualifying service.

4. Elimination of the Age Requirement for Widows

Widows of qualified veterans or recipients must be 55 years of age or, if under that age, permanently disabled and unable to work before they can get Widow's Allowance. Currently widows who cannot qualify because of age and who cannot get work, are obliged to seek social assistance from provincial governments. Widows concerned maintain that their husbands undertook honourable service for Canada, and they should be eligible for benefits under the War Veterans Allowance Act and Civilian War Pensions & Allowances Act, especially where there are dependent children, without having to wait until they are 55.

The Royal Canadian Legion therefore proposes that the age reference be eliminated, and that eligibility to Widow's Allowance be determined solely on the basis of financial need.

5. Service on Deep Sea Rescue Tugs

The number of men who served on deep sea rescue tugs was small. They performed a gallant service, often in extremely hazardous conditions, when they proceeded far out to sea to rescue vessels disabled by enemy action. They are currently excluded from the benefits of the Civilian War Pensions & Allowances Act by virtue of the narrow definition of "ships" as contained in that Act.

The Royal Canadian Legion therefore proposes an amendment to the definition of "ships" so as to include not only vessels carrying cargo or passengers, but also deep sea rescue tugs.

Our Dominion President has proposed the establishment of a Joint Study Group to review these and other outstanding War Veterans Allowance matters, as was done in the case of the Basic Rate of Pension in 1972. Such a group would consist of persons nominated by the Minister of Veterans Affairs from his Department and the War Veterans Allowance Board, and veteran members nominated by our President representing all Veterans' Organizations. The previous Group served an exceedingly helpful role in connection with the establishment of a new basic rate.

Your Invitation to attend Tuesday's meeting is appreciated. I will be prepared to answer questions or to provide more details regarding the Legion position, as may be required by the Committee.

Yours sincerely,

And it is signed "H. Hanmer, Director, Service Bureau."

I do not know if you wish to say anything to supplement your letter, Mr. Hanmer.

Mr. H. Hanmer, Director, Service Bureau, Royal Canadian Legion: Thank you, Mr. Chairman.

Honourable senators, the Royal Canadian Legion greatly appreciates the opportunity to appear before this committee, and to present its views on some of these subjects in brief form. We have no desire to delay the processing of this bill and we made this adequately clear, I think, when we appeared before the committee in the House of Commons. At the same time we did not wish to let go by the opportunity to bring to the attention of our legislators the changes which we see as being desirable in this legislation in the future. We realize that this cannot be brought about

in the bill that is presently before you, but at the same time we do feel that these issues are very important, particularly the one dealing with the equalization of war veterans' allowance payments, which we would very much like to keep active.

We feel that one way this might be done, Mr. Chairman, would be by the appointment of a committee such as our Dominion President has mentioned in his submission to the other committee, and which is mentioned in this letter. This would be an on-going committee consisting of public servants and members of veterans' organizations, and would go deeply into all aspects of the War Veterans Allowance Act and the Civilian War Pensions and Allowances Act. Hopefully, from this might emerge a report which the legislators could work on with a view eventually to bringing down all the desirable changes in this legislation which we and other veterans' organizations have been seeking for a number of years.

I have no desire to delay matters any further, Mr. Chairman, except to introduce my colleague Mr. Ed Slater, from my staff at the bureau, who is here with me.

The Chairman: My good friend Don Thompson is here. Have you a statement you would like to make on the act?

Mr. D. M. Thompson, Chairman, War Veterans Allowance Board: No, Mr. Chairman.

Senator Croll: I'll have him say something in a minute, don't worry!

The Chairman: We are open now for questions.

Senator Croll: If I may, Mr. Chairman, this is the first time I have ever seen Mr. Thompson before the committee. I have seen you, Mr. Thompson, often on other occasions, when you did not, in my opinion, ask for enough. Let me see if I am correct. You said \$238 was the recommendation for all single veterans, did you not?

Mr. Hanmer: This is our recommendation for the single scale.

Senator Croll: Yes, \$238. If I multiply that out, that means about \$2,850. Will somebody multiply that and see if I am right in saying \$2,850? It sounds close. I just multiplied by twelve.

Mr. Thompson: I think, sir, with due respect, Senator Croll is assuming that I am part of the Legion delegation...

Senator Croll: No, no; I know who you are. I am just asking the questions, because you have to deal with it. I mean, you are on our side in this case.

The Chairman: You are taking Mr. Hanmer's figure and are asking Mr. Thompson questions on it.

Senator Croll: Well, all right, Mr. Hanmer. Let us get it right. Has somebody multiplied it?

Mr. Hanmer: It is \$2,866.

Senator Croll: That is right. Do you remember that in the inquiry that was made last year you established a method for calculating a poverty line, which was half of the average income for a family of four? That was one of the principles in the findings of the committee, as set out in the report.

Mr. Hanmer: In the poverty committee?

Senator Croll: No. I am referring to the veterans' report. Do you remember that report?

The Chairman: Which report is that?

Senator Croll: Last year there was a committee established to deal with veterans' problems, and they brought in a report.

Mr. Hanmer: We had a committee, sir, that dealt with the basic rate of disability pension.

Senator Croll: That is right, and on that basis they established a principle by which they based it on half the average income for a family of four.

Mr. Hanmer: The pension committee determined that the rate should be established on the average of five categories of public servants, and the salaries paid to them, and this would be the basic rate for a single, one hundred per cent pensioner, after income tax had been taken into account; but this, of course, dealt with disability awards rather than with war veterans' allowances.

Senator Croll: It is this question of the allowance I am concerned with, and the amount. I recall the principle very clearly, but I may be mistaken. I know the five categories, but in fixing the poverty line they not only accepted it, but I remember reading the speeches in the House of Commons commending it. I could be wrong, but I doubt it very much. You do not remember it?

Mr. Hanmer: No, sir.

Senator Croll: All right. Somebody else go ahead. I will see if I can recall it.

Senator Inman: I want to ask a question about people who have a disability, who, when they came out of the services, did not speak of it because they wanted to get out instead of being kept in. The gradually the disability got worse and worse. Several people have been to me about this sort of thing, and nothing can be done because they came out of the army with a clean bill of health, when in fact they were disabled. Now, what can be done about people like that?

The Chairman: Are you asking Mr. Thompson?

Senator Inman: I am asking whoever is able to answer it.

Mr. Thompson: Mr. Chairman, in the case the senator has mentioned, the person would still have the right to claim under the Canada Pension Act; but, aside from that, if they are 60 years of age, or if through a combination of physical handicap and economic circumstances they are unable to provide for themselves, and they have the service qualifications of having served in a theatre of actual war or having served in both wars, they could be eligible for war veterans allowance, depending on their income. But the two statutes are completely separate. The one, the Pension Act, deals with disability or death as a result of service, whereas the war veterans allowance provides for an allowance to be paid to persons of 60 years of age, or under 60 years of age if they are unable to provide for themselves and maintain themselves. So you could have a situation, such as the senator mentioned, where a person did not establish a claim or it was not recorded but who now, if he is unable to provide for himself and if he has the service, could come under the War Veterans Allowance Act.

Senator Inman: Well, I have one particular case in mind of a man who said that he was all right, but in fact he was not. Now he has a bad case of emphysema. He gets something, but it is not enough. His wife goes out to work. It seems to me that I have heard that he has been before boards and has been turned down because he was all right when he came out of the service. I know a lot of the boys did that for the sake of getting out.

Mr. Thompson: That would seem to be a situation that would come under the Pension Act.

Senator Croll: Mr. Thompson, do you have a copy of the task force report that was referred to, or does anybody have a copy of it?

Mr. Thompson: Are you referring to the report of the joint committee of departmental officials and veterans' organizations which made the proposal on the 100 per cent pension?

Senator Croll: Yes, that is right.

Mr. Thompson: I do not have that, senator, because that dealt with the Pension Act, but I would think that the veterans' organizations would have it or the minister's office.

Senator Croll: Would the library have it, do you think?

Mr. Thompson: I would think so, but I do not know. But, as I say, I do not have one because it comes under the Pensions Act.

Senator Bélisle: Mr. Chairman, I have a question to ask of Mr. Thompson which I think he may have answered partly, but I am not quite satisfied with the answer as given. Does the department intend considering shortly reducing the age limit for males to 55 to correspond with that for females when it is conceded that the veteran has forfeited 10 years of his life in service? In other words, when will we have equality?

Senator Croll: With women?

Senator Bélisle: Yes, with women.

Mr. Thompson: I must, with all due respect, point out that that is a question of government policy, and as chairman of the War Veterans Allowance Board I would not be in a position to give Senator Bélisle an answer on that question.

Senator Bélisle: Well, a final question. I spoke at length about the morality of the new bill, and here may I point out that I am all in favour of the bill but I would like to know how many veterans, male or female, will benefit from the shortening of the period in the case of common-law relationships before the children can qualify for assistance. It used to be seven years, and now it is reduced. But how many cases have you on file that will qualify?

Mr. Thompson: I do not have any figures on that. You mean, how many people will benefit by reducing the seven-year term to three years?

Senator Bélisle: Yes.

Mr. Thompson: We do not have any figures on that.

Senator Prowse: Can you give a good guess?

Mr. Thompson: There would be no basis for a guess, senator. But where there are children in a family in this

situation—and this may be helpful to Senator Belisle—it has been possible, even though under the act you could not recognize the wife for married rates, to recognize the children and pay the married rate, under the appropriate column, in the schedule to the act which provides for a veteran residing with a child. Therefore you could pay the married rate in that case if there was a child. Now, under this bill, where there is additional provision for the children it would mean that with the reduction to three years you can pay the married rate and then you can pay the additional moneys for each child provided for in the bill.

Senator Belisle: I am all in favour of that. I hope you will read my comments afterwards. I wish this applied to the Senate too.

Senator Fournier (de Lanaudière): I would like to know how many persons are receiving the benefits under the War Veterans Allowance Act and the global amount of payments.

Mr. Thompson: As of March 31, the total number of recipients for both war veterans allowances and civilian allowances, part 11, was 85,238 for a total figure of \$111,765,086.

Senator Belisle: In other words, I was right in my figure.

The Chairman: Any further questions?

Senator Prowse: Is this allowance subject to abatement where a person has a very large disability pension, let us say 100 or 80 per cent, that would give him extra income but which comes from another source. In other words, if the disability pension is paid in full, is it taken into consideration in considering the other financial aspects and limitations?

Mr. Thompson: Yes, the additional pension paid under the Pension Act, except that part paid on account of children, for a veteran or for a veteran and his wife is assessable as income under the War Veterans Allowance Allowance Act.

Senator Prowse: Why?

Mr. Thompson: That is the way the act is written. But there is a difference of \$40 single and \$70 married between the rate payable and the ceiling permitted. So that in the case of a single veteran, if he had no other income, \$40 of that disability pension would be exempt income, just as \$40 of workmens' compensation or something else like that would be. From then on it is considered dollar for dollar of income.

Senator Macdonald: In the case of a married woman getting a disability pension, with a working husband and a son they are educating, if they felt they could not afford to send him to a professional school would the department assist in paying for his education?

Mr. Thompson: I would like to make it clear that under the bill before you and under our act there would not be such a provision, because I assume from what you said that the income of the couple would be above the ceiling provided for in the War Veterans Allowance Act. Therefore there would be no provision under our act, but there may be under other measures, through welfare services or benevolent funds or some other measures like that. But under our legislation, since it would seem that their income would be in excess of the ceiling, there would not be any benefit of this type for them.

Senator Norrie: I have in mind a family of four children. The veteran fought in Italy for four years and never got a scratch; he had no disability. But then, when he was about 55 or 57 years of age, he had a stroke, so he is greatly worried about his family not having enough money to be educated. Now his wife is working and he is pushing a wagon around a factory somewhere and getting some money for doing that, but he should not be doing it. That, in turn, knocks money off her income which is about \$5,000. Now one of those children is going to college, or is trying to, and they just have no income under the War Veterans Allowance Act to educate the children. Why is that? He served four years in the midst of the fighting and they cannot obtain any money to educate their family.

Mr. Thompson: You say her income would be \$5,000 from her earnings?

Senator Norrie: I think it is a little less than \$5,000.

Mr. Thompson: By regulation \$1,500 of that would be exempt income, because that is casual earnings, and the balance would have to count as income against the income ceiling provided in the act.

Senator Croll: What amount is that?

Mr. Thompson: How many children are involved in this case?

Senator Norrie: Four.

Mr. Thompson: Under the new bill, married and with four children, it would be \$582.90 per month as the income ceiling. That is taking the married ceiling and adding the additional \$50 allowed for each child, making a total of \$582.90.

Senator Croll: She only earns \$5,000 and is entitled to an exemption of \$1,500 so there is only \$3,500, as opposed to \$7,000 which is the limit. Why, then, are not the children entitled to assistance from the fund, or any other fund, for purposes of education?

Mr. Thompson: This bill changes that situation in such an instance as that mentioned by the senator drastically, because now under the act they can only be recognized as a married couple. As of January 1, 1974 the ceiling, under which they are recognized as married, was \$344.44. Because there was no provision for any additional payment on account of the children, a married veteran with no children received the same payment as a married veteran with four children. Under this bill the children are recognized and the ceiling is increased. The amount of allowance that can be paid increases in proportion to the children in the family.

Senator Norrie: That is much better.

Senator Prowse: Would that cover the situation?

Mr. Thompson: By just a rough calculation it seems as though it would well cover it.

Senator Norrie: Whatever she earns is deducted from her salary.

Mr. Thompson: Because casual earnings apply in a lump sum to both. She may earn part of it, he may earn part of it, or he may earn all of it, but it is a total \$1,500 for both.

Senator Norrie: Does he still have to deduct whatever he earns from his wife's salary?

Mr. Thompson: It is the same whichever earns it. That is \$1,500 under the regulations, not under the act.

Senator Norrie: That is much better, is it not?

Senator Croll: Is it a full or a partial deduction for money earned over and above that figure?

Mr. Thompson: After the exemption is deducted, sir, and once it becomes assessable income, it is assessed on a straight dollar-for-dollar basis.

Senator Norrie: So it does not matter whether he has a disability, the children will still be looked after?

Mr. Thompson: Up to the permissible rate and ceiling, yes. In cases such as that, senator, many of these people, if the bill is passed and receives royal assent, may have inquired years ago and been refused. They will benefit now but may have no knowledge that this will bring them entitlement.

Senator Croll: How will that information get to them?

Mr. Thompson: It would be expected that the procedure followed the last time the bill was changed will be repeated. Then an advertising campaign was mounted to bring it to the attention of those involved. The personal property factor a year ago last March was abolished with respect to eligibility. An advertising campaign was carried on to draw it to the attention of the public that personal property was no longer a barrier to eligibility for war veterans allowance.

Senator Croll: I believe the chairman will inform you that it would be the wish of the committee that advertising be carried out throughout the country.

Mr. Hanmer: I would like to make two observations with respect to this particular situation. First, in the instance of the child you mentioned, attending university or pursuing further education, many of our provincial commands have bursary schemes under which they are prepared to assist, as far as the money goes, children, particularly of veterans in difficult financial circumstances, with the costs of university training. The assistance varies, ranging from perhaps \$200 to \$300. However, it is some help at least, and we have experienced a number of instances recently in which people have been assisted in this manner. I do not know which province is involved in this particular case.

Senator Norrie: Nova Scotia.

Mr. Hanmer: I do not know how extensive the Nova Scotia bursary scheme is, but certainly in Ontario it is quite substantial and the ladies' auxiliary have provided a good deal of the money from their resources. I am certain that once this legislation becomes law our magazine, which has a circulation now of approximately 420,000, will certainly publish references to the changes. This will inform those who might otherwise not know, or those who might previously have failed to qualify because of the less generous provisions, that they can now re-apply with some prospect of succeeding. We consider this to be part of our task, of course.

Senator Norrie: We have a good Legion man down there.

Senator Inman: I know of the case of a young man who is endeavouring to put himself through college and wishes

to enter university next year with a view to becoming an engineer. He is earning money and helping himself so far. He can still work during holidays, I imagine. Will he be eligible to apply? His father is a veteran. It is the same couple to which I referred, the mother going out and doing housework and the father earning a little over \$200.

Mr. Thompson: Is this young man an orphan, or a child of a widow?

Senator Inman: No. He is a child with a father and mother who certainly do not earn sufficient to pay for his university course.

Mr. Thompson: The bill also proposes to raise the age to which the allowance may be paid if a child continues education to age 25 from 21. Therefore if the person meets the qualification of a dependant child the raising of the age to 25 would cover that situation.

Senator Inman: Thank you.

Senator Bélisle: In my observations I inquired if the Government would consider raising the minimum level throughout the country. This is because in British Columbia there is now a guaranteed income of \$220. Under the existing legislation that figure is \$201, which would be raised to \$211. A veteran living in British Columbia or Ontario will receive more because of that provincial legislation than one in Nova Scotia, Prince Edward Island, Newfoundland or, maybe, Manitoba. In view of the fact that veterans served throughout the country, would any consideration be given to that? Why should they be penalized if they live in the non-rich eastern provinces or some of the western provinces?

Mr. Thompson: That again is a matter of policy to determine rates. Where the supplements are paid—you mentioned British Columbia, and so on—the regulations have been made so that the money paid as a provincial supplement is considered as being exempt income. So you do not have the situation of the provincial government paying a person some extra dollars and the War Veterans Allowance taking it away so that one has not accomplished what you referred to, equalizing it so that the War Veterans Allowance recipient in New Brunswick will get the same as the one in British Columbia. It has by regulation been possible to avoid the situation of taking away the dollars because it has been exempted by regulation. With regard to the other side of the question, sir, it is a question of government policy to determine the rates and ceilings they put forward.

The Chairman: May I ask a supplementary question, connected with the one asked by Senator Fournier? In reply to his question about the total cost, you said it was \$111,765,086 for the year ended March 31. Do you know what the comparable figure would be if this bill had been in effect—how much difference it would have made?

Mr. Thompson: Not on that basis. It was estimated that the cost of this would be in the neighbourhood of \$10 million.

The Chairman: A year?

Mr. Thompson: Yes.

The Chairman: Does that mean \$10 million over and above what would be paid with the regular escalation computed annually? There would be some escalation anyway, whatever the index is for the previous year.

Mr. Thompson: I am out in my recollection. The proposals here will cost approximately \$12,700,000; but since there was an escalation already included, the annual escalation, it is estimated there will be \$12 million additional, because you already had provision for an annual escalation. Now we are going to the quarterly escalation and there is a slight increase on the cost of a quarterly escalation in addition to the additional moneys for children and other costs.

The Chairman: So the total additional cost of this legislation will be around \$10 million, roughly 10 per cent?

Mr. Thompson: Yes, on that basis.

The Chairman: With regard to widows, how will the widow's allowance under this legislation compose with the widow's pension under the pension plan? Will there be much discrepancy?

Mr. Thompson: It is \$313 under the Pension Act.

The Chairman: What will the widow's pension be?

Mr. Thompson: The widow is paid, under the War Veterans Allowance Act, at the single rate, which, at the revised rate, will be \$183.66.

Mr. Hanmer: The rate on January 1 for the disability widow is \$345.38

The Chairman: There is still a gap between what the widow would receive under the Pension Act and what she would receive under the War Veterans Allowance Act.

Mr. Thompson: Yes. There is a \$40 difference between the rate and the ceiling. If the rate is paid and there is no other income to take care of that \$40 difference, there is a fund known as the Assistance Fund, War Veterans Allowance, which can be paid by welfare services to meet actual proven costs within that gap. So that if a person has proven costs, they get the equivalent of the ceiling, because they get the rate and the benefit of the assistance fund which can be used to bring it up to the ceiling. The single ceiling will be \$223.66.

Senator Norrie: Is that for the veteran's widow?

Mr. Thompson: That is for the widow under the War Veterans Allowance Act.

Senator Norrie: What does the ordinary widow receive?

Mr. Thompson: Three hundred and forty five dollars and forty eight cents, from January 1. It is 313 at the moment. That is where the husband died as a result of war service.

Senator Norrie: I am referring to those outside the veteran service, the ordinary widow's pension or mother's allowance.

Senator Inman: What about the case of a woman who has served overseas and she herself is not well, but her husband receives a salary—what happens then?

Mr. Thompson: I am not clear whether her illness is as a result of her service or has no connection with it.

Senator Inman: Well, it might be from her service.

Mr. Thompson: In that case, she could make an application under the Canada Pension Act. But as far as the allowance is concerned, if her husband has a job, his

income must be counted with her income. On the other hand, if she were the breadwinner and he was unable to work, the married rate could apply in this case on the basis of her service.

Senator Inman: I asked the question because we shall be receiving letters asking this sort of question, and I want to be clear.

The Chairman: I would like to take that comparison a little further. A single widow, under the Pension Act, would receive \$346. A single widow receiving the allowance would get 183.66. If the widow has a child, under the War Veterans Allowance Act she would be paid at the married rate as though her husband were alive. Under the Pension Act she would receive an additional allowance for the child. What would a widow and one child receive under each act?

Mr. Thompson: Under the War Veterans Allowance Act, under the revised ceiling, the widow with one child would be considered as being married. The ceiling there would be \$382.90.

The Chairman: There is a tremendous gap there.

Mr. Hanmer: The widow with one child, under the Pension Act—we do not have the chart with us, we are just guessing—would receive about \$460.

The Chairman: Under the War Veterans Allowance Act she would receive \$382.90. There is a tremendous gap there for the single widow.

Mr. Thompson: The ceiling and the rate are different by the said \$70. The widow with one child, under the War Veterans Allowance Act would receive a revised rate of \$312.90. Then you have a \$70 difference in the rate of the ceiling.

The Chairman: If the widow had three children, eventually she would receive more under this act than she would under the Pension Act.

Mr. Hanmer: No, sir.

The Chairman: It goes up by \$125 for each orphan.

Mr. Thompson: They are not orphans. They are children. The orphan rate applies only in the case of children that meet the definition of orphans under the act.

The orphan rate only applies in the case of children who come within the definition of orphan under the act.

Mr. Hopkins: In the case where both parents are dead.

Mr. Thompson: Or one parent dead and deserted by the other.

The Chairman: Is it not possible under the act for a widow to have two or three orphans?

Senator Benidickson: No.

The Chairman: How can one child be an orphan and two or three children not be orphans?

Senator Prowse: As long as there is a mother or a father, they are not orphans.

The Chairman: So, it is when the mother and father are both gone. The first child gets the larger amount and the others get \$50 minus the family allowance?

Mr. Thompson: Yes.

The Chairman: So, the discrepancy is between the single widow under the Pension Act and the single widow under the War Veterans Allowance Act, one getting almost double the other.

Senator Benidickson: I should know this, but I have forgotten. I think it should be on the record in any event. When was the legislation introduced which provided for the escalation or indexing of benefits to the cost of living?

Mr. Thompson: For the first time, senator?

Senator Benidickson: Yes.

Mr. Thompson: In May 1972.

Senator Benidickson: And at that time were there also some substantial increases provided in basic allowances?

Mr. Thompson: Provision was made for escalation only, senator, to reflect the consumer price index increases.

Senator Benidickson: That was the sole import of the amendment brought down at that time?

Mr. Thompson: Yes.

Senator Bélisle: Mr. Chairman, I move that we report the bill without amendment.

The Chairman: Is it agreed that we report the bill without amendment?

Hon. Senators: Agreed.

The committee adjourned.

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FIRST SESSION—THIRTIETH PARLIAMENT
1974

THE SENATE OF CANADA
PROCEEDINGS OF THE
STANDING SENATE COMMITTEE ON
**HEALTH, WELFARE
AND SCIENCE**

The Honourable C. W. CARTER, *Chairman*

Issue No. 4

TUESDAY, NOVEMBER 26, 1974

Complete Proceedings on Bill C-22,
intituled:

“An Act to amend the Canada Pension Plan”

REPORT OF THE COMMITTEE

(Witnesses—See Minutes of Proceedings)

THE STANDING SENATE COMMITTEE ON
HEALTH, WELFARE AND SCIENCE

The Honourable C. W. Carter, *Chairman*.

The Honourable M. Lamontagne, P.C.,
Deputy Chairman.

and

The Honourable Senators:

Argue, H.	Goldenberg, H. C.
Blois, F. M.	Inman, F. E.
Bonnell, M. L.	Langlois, L.
Bourget, M.	Macdonald, J. M.
Cameron, D.	McGrand, F. A.
Choquette, L.	Neiman, J.
Croll, D. A.	Norrie, M. F.
Denis, A.	*Perrault, R. J.
*Flynn, J.	Smith, D.
Fournier, S.	Sullivan, J. A.—(20)
(<i>de Lanaudière</i>)	

**Ex officio* member

(Quorum 5)

Order of Reference

Extract from the Minutes of Proceedings of the Senate
of Tuesday, November 19, 1974:

Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Carter, seconded by the Honourable Senator Fergusson, P.C., for the second reading of the Bill C-22, intituled: "An Act to amend the Canada Pension Plan".

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Carter moved, seconded by the Honourable Senator Fergusson, P.C., that the Bill be referred to the Standing Senate Committee on Health, Welfare and Science.

The question being put on the motion, it was—
Resolved in the affirmative.

Robert Fortier,
Clerk of the Senate.

Minutes of Proceedings

Tuesday, November 26, 1974.

Pursuant to adjournment and notice the Standing Senate Committee on Health, Welfare and Science met this day at 2.35 p.m.

Present: The Honourable Senators Carter (*Chairman*), Argue, Bourget, Denis, Fournier, Inman, Lamontagne, Langlois, McGrand, Neiman and Norrie. (11)

Present but not of the Committee: The Honourable Senator Haig.

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

The Committee proceeded to the consideration of Bill C-22, "An Act to amend the Canada Pension Plan".

The following witnesses were heard in explanation of the Bill:

Miss Coline Campbell, M.P.,
Parliamentary Secretary to the
Minister of National Health and Welfare;

Mr. Walter A. Kelm, Director,
Planning and Development Division,
Canada Pension Plan Branch,
Department of National Health and Welfare.

On motion of the Honourable Senator Inman it was *Resolved* to report the Bill without amendment.

At 3.00 p.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Patrick J. Savoie,
Clerk of the Committee.

Report of the Committee

Tuesday, November 26, 1974.

The Standing Senate Committee on Health, Welfare and Science to which was referred Bill C-22, intituled: "An Act to amend the Canada Pension Plan" has, in obedience to the order of reference of Tuesday, November 19, 1974, examined the said Bill and now reports the same without amendment.

Respectfully submitted.

Chesley W. Carter,
Chairman.

The Standing Senate Committee on Health, Welfare and Science

Evidence

Ottawa, Tuesday, November 26, 1974.

The Standing Senate Committee on Health, Welfare and Science, to which was referred Bill C-22, to amend the Canada Pension Plan, met this day at 2.35 p.m. to give consideration to the bill.

Senator Chesley W. Carter (*Chairman*) in the Chair.

The Chairman: Honourable senators, as you know, we have for consideration Bill C-22, and as witnesses Miss Coline Campbell, M.P., Parliamentary Secretary to the Minister of National Health and Welfare, and Mr. W. A. Kelm, Director, Planning and Development Division, Canada Pension Plan Branch, Department of National Health and Welfare.

Do you wish to make an opening statement, Miss Campbell?

Miss Coline Campbell, M.P., Parliamentary Secretary to the Minister of National Health and Welfare: Thank you very much, Mr. Chairman. I have a brief statement.

As most of you know, this bill is just about identical to that which was introduced and was before the House when it adjourned for the election in May. I will just go over the substantial amendments which have been incorporated into it. If there are questions, perhaps they can be fielded by Mr. Kelm or one of his officials. Mr. Kelm, would you introduce your officials?

Mr. W. A. Kelm, Director, Planning and Development Division, Canada Pension Plan Branch, Department of National Health and Welfare: Mr. MacKenzie is not with our department. He is the Director, Source Deductions Division, Department of National Revenue, Taxation. To his left is Mr. Bassett, Operations Officer, Source Deductions Division, and further to his left, Mrs. J. F. Lee, Senior Project Officer, Canada Pension Plan Branch, and Mr. R. F. Kemp, Assistant Director, Claims and Benefits, Canada Pension Plan Branch.

Miss Campbell: I will just read to you a few of the major amendments. The substantial planned amendments proposed in this bill are identical to those which were contained in Bill C-19 which was before the last Parliament, namely, full equality of treatment of male and female contributors and beneficiaries under the Canada Pension Plan. I believe everyone understands that point. If not, it can be explained in more depth.

The second amendment is the repeal of the earnings and retirement tests under the plan, so that contributors aged 65 and over can draw the total CPP retirement pension they have earned, without regard to the subsequent earnings.

Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel: What about their present earnings?

Miss Campbell: The choice is to continue to contribute until age 70, or decide to take the pension. If it is decided to take the pension it is not necessary to contribute further, but the contributor can continue to earn.

Senator Denis: A person could retire two years from now in order to obtain the maximum, because it was passed in 1966 and the qualifying period is 10 years.

Miss Campbell: That is right.

Senator Denis: What is the final date?

Mr. Kelm: January 1, 1976.

Miss Campbell: Previously a person could not earn in benefit and this legislation provides for earning in benefit but not contributing in benefit. Once a person starts receiving benefits he or she will no longer contribute.

Mr. Hopkins: A person must retire in order to benefit.

Miss Campbell: No. A person can collect the pension and continue to earn without contributing.

Senator Argue: The contributor just discontinues contributing, that is all.

Mr. Hopkins: No one ever had it so good!

Miss Campbell: As the senator pointed out though, at January 1, 1976 the maximum 10-year pension would be payable.

Mr. Kelm: After January.

Senator Inman: From what age did you say?

Miss Campbell: Sixty-five.

The third amendment is the introduction of a new formula for determining the year's maximum pensionable earnings, which is the earnings ceiling for the plan, so that future benefits and revenues will reflect the advances in Canadian wage levels that have occurred during the last decade. The new formula also provides that once a base for calculating new benefits and determining fund revenues is brought up to parity it will keep pace with future increases in the average earnings of Canadian industrial workers.

Senator Haig: In other words, the pension will increase?

Miss Campbell: That is correct.

Mr. Kelm: Yes, the ceiling determines the contribution and also is the basis for determining the level of pensions.

Senator Haig: The pension increases automatically.

Mr. Hopkins: There is no means test, income test or any other test?

Miss Campbell: No.

Mr. Hopkins: Was there at any time?

Miss Campbell: The ceiling rises even though the person is not contributing, but the new contributors will contribute according...

Senator Haig: Let us take a person who has taken a pension at age 65. That pension will increase, depending on what?

Mr. Kelm: The cost of living.

Senator Haig: Will that be adjusted quarterly or annually?

Mr. Kelm: Annually.

Senator Inman: What would happen if the cost of living were to decrease?

Mr. Hopkins: In that event no adjustment would be made?

Mr. Kelm: That is correct.

Senator Bourget: Until what age is a person allowed to contribute? Is there a limit on the age? Is it 70 years of age?

Miss Campbell: Yes.

Senator Denis: When you retire and get your pension, is it based on the last ceiling?

Mr. Kelm: It is related to the ceilings in the last three years.

Senator Denis: Suppose the ceiling is \$6,000 and you are entitled to one-quarter, it is fixed on the last ceiling?

Mr. Kelm: It is the average of the last three years. It is the year in which you retire. You take a quarter of that. Assuming a person has been making contributions at the maximum, the pension for that person is 25 per cent of the average ceiling of the last three years.

Senator Denis: But if any of the ceilings increase, you do not take advantage of that?

Mr. Kelm: No; it is only the cost of living.

Miss Campbell: There is another change. Modifications of the current formula for determining the basic exemption for the plan, so that Canadians at lower income levels will have a greater opportunity to participate more fully in the Canada Pension Plan. In other words, that would probably affect the independent fisherman or farmer who perhaps in a bad year cannot contribute as much as he would in a normal year. He cannot juggle it exactly, but fluctuate it.

Senator Bourget: He can average it out.

Miss Campbell: Not average it, so much; he can drop out at a certain level and come back in later.

Mr. Kelm: At the present time the minimum is 12 per cent of the ceiling. This bill proposes that it be reduced to 10 per cent.

Miss Campbell: There are a large number of technical amendments, many of which are designed to rectify minor

errors, inequities and anomalies that the department has uncovered in the administration of the plan. Generally speaking, these technical proposals do not affect large numbers of contributors and beneficiaries, but they are of substantial importance for individuals directly affected and would in almost all instances operate to their advantage.

There was also one amendment made at the committee stage, at which time there was a change in the appeal procedure. The board was increased from 6 to 10. The six may have come from central Canada and they could not meet out West. The change is to enable a regional board to meet and speed up appeals. That was done at the committee stage during the second reading of the bill. I now open the floor to questions.

The Chairman: Do you have anything to add at this moment, Mr. Kelm?

Mr. Kelm: No, Mr. Chairman.

Senator Denis: What is the present ceiling?

Mr. Kelm: Sixty-six hundred dollars.

Senator Denis: Does it increase every year?

Mr. Kelm: Yes, to \$7,400 next year.

Senator Denis: That is an increase of \$800.

Mr. Kelm: Right.

Senator Denis: Is that the average?

Mr. Kelm: The bill provides that the ceiling will be increased at 12½ per cent a year until it reaches the level of Canadian industrial worker wage rates. At the moment it is \$6,600 to \$7,400, which is an increase of 12½ per cent. It will increase 12½ per cent a year. From \$7,400 it will go to \$8,400 the following year, then \$9,300, and then \$10,400.

Senator Denis: That is an average of 12½ per cent?

Mr. Kelm: Yes.

Senator Argue: What is the maximum pension?

Mr. Kelm: Right now we are in a transitional period. It is \$108.58.

Senator Argue: What would it be three or four years from now?

Mr. Kelm: In January 1976 it will be \$154.85. Then it increases roughly \$20 a year from that point on. It depends on the average of the ceilings I have mentioned. It is 25 per cent of the average of the last three.

Mr. Hopkins: That is without a means test, income test, or anything else?

Miss Campbell: That is right.

Mr. Hopkins: And in addition to Old Age Security, and so on?

Miss Campbell: That is in addition to Old Age Assistance.

Senator Haig: It is taxable?

Mr. Hopkins: It is taxable, yes.

Senator Denis: When you are talking about an increase of \$20 per year, you mean \$20 per month.

Mr. Kelm: Yes. The monthly rate is increased by \$20. You are quite right. It is a monthly increase.

Senator Argue: What might it be 10 years from now?

Mr. Kelm: I think the minister, in his statement, indicated that in 1985 the maximum would probably be around \$350 per month per person.

Senator Bourget: Did you discuss the amendments with the Province of Quebec, and will they accept all of the amendments you are now proposing?

Mr. Kelm: Yes. These proposals arise from the conference that was held with the provinces in October last year, when all the provinces agreed to the increases in the earnings ceiling.

Senator Inman: How much of this amount comes from contributions to the fund?

Mr. Kelm: It would vary with the particular contributor. In the early stages of the plan, 1976, it is only necessary to contribute 10 years to get the maximum pension; whereas, to go to the other extreme, a person who was 18 years in 1966 has to contribute 47 years to get the maximum pension. It depends a great deal on the particular contributor you are talking about.

Senator Bourget: In the case of the death of a recipient, what percentage would his wife get; and, if the wife dies, how much will the children get?

Mr. Kelm: Let us take someone under the age of 35 with children. It would be a flat rate, which at the moment is \$33.76, plus 37½ per cent of the retirement pension that would be payable.

Senator Bourget: That would be the maximum?

Mr. Kelm: Yes, plus \$33.76 for each child. That is under age 35. It goes all the way up to age 65. At 65 it changes to 60 per cent of the spouse's retirement pension.

Mr. Hopkins: What is the minimum pension payable under this?

Mr. Kelm: The minimum retirement would be 10 per cent.

Mr. Hopkins: Of the last three years?

Mr. Kelm: Yes. A person could get a pension that might be a few cents, if he contributed for one month.

Mr. Hopkins: When does the period begin?

Mr. Kelm: The period begins on a continuing basis when a person reaches the age of 18. When the plan was introduced, we substituted for age 18 the age of the person in 1966.

Mr. Hopkins: That was the year I wanted—1966.

The Chairman: These pensions are calculated on the earnings of the past year.

Mr. Kelm: This is the maximum pension. If you relate a pension to a particular individual, you would have to look at the ratio that his wages bear to the maximum. If a person has contributed all along at half the maximum level, then it would be half the pension.

The Chairman: The acceleration at the rate of 12½ per cent a year is intended to catch up with the industrial index. If the index advances at 12½ per cent a year, you will never catch up.

Mr. Kelm: That is true.

The Chairman: How does that 12½ per cent escalation compare with the increases in the index over the last two years?

Mr. Kelm: Let us say the last five to 10 years. It has been moving at the rate of 7½ per cent. In the last year I think it moved something like 10 per cent, or thereabouts.

The Chairman: So you are on an upgrade. It is quite possible that it could go up to 12 per cent, in which case the gap will never close.

Mr. Kelm: That is right.

Senator Haig: What time of year does the increase take place? If a person receives his pension in July 1974, does it go up in July 1975?

Mr. Kelm: The cost of living adjustment is made every January.

Senator Haig: Regardless of when he started?

Mr. Kelm: That is right.

The Chairman: Senator Macdonald did raise several points in connection with this bill during debate on second reading. One of the points he raised was in connection with retroactive payment, and I quote from his speech reported at page 277 of Senate Hansard of Tuesday, November 19, as follows:

I notice, though, that while in such cases retroactive entitlement is provided for, retroactive payment is not provided for. I do not understand why this should be so, since the female contributor made contributions just as the male contributor did.

Is there any explanation for that?

Mr. Kelm: There are two aspects to that, Mr. Chairman, one being administrative and the other being the general problem which presents itself whenever you date something back too far. In other words, you have to take a look at what the situation was. If we took this back to 1968, for example, and some of the people had been receiving welfare or guaranteed income supplements, based on the assumption that they were not receiving Canada Pension Plan income, you are then altering the situation.

Also, there are situations where the payment of a survivor's benefit, particularly for people under the age of 35, depends upon whether or not they are disabled, and to go back to apply that you would then have to ask whether or not the person was disabled at the time of the spouse's death. That is the kind of difficulty you get involved in.

The Chairman: These would be administrative complications?

Mr. Kelm: That is right.

Senator Carter: Senator Macdonald raised another point, as follows:

Speaking of retroactive payments, there is another case dealt with by the act itself which I find very confusing. I do not understand why it is that, if a person is late in applying for the Canada pension after he or she becomes qualified, retroactive payment will be made for only one year prior to the application. To me it is absolutely incredible that, for example, a person who becomes, say, 70 years of age and does not make application for the pension until two years later, will be paid for only one year retroactively, although that same person and his employer have made the required contributions.

What is the reason for that?

Mr. Kelm: Whenever you get into retroactivity, Mr. Chairman, you have to draw the line somewhere. I think you will find that in most of the social security legislation the one-year retroactivity period applies. I think the Americans, in their social security legislation, have also chosen the one-year retroactivity period. It is a question of how far you go back.

Senator Bourget: I think that is an important point, Mr. Chairman. I did not clearly understand the explanation given by Mr. Kelm.

Mr. Kelm: It is simply that one has to pick a cut-off date for retroactive payments. If an individual has reached the age of 70 years without having applied for the Canada pension, on application he is only entitled to one year's payment retroactively.

Senator Bourget: Does the same apply in respect of old age security payments? As I understand it, applicants for old age security should apply six months in advance of reaching the age of 65. If I am approaching age 70—which is not too far away in my case,—would I have to apply six months in advance?

Miss Campbell: In respect of old age security payments, on application at any time, there is a one-year retroactivity period after 65 years of age.

Senator Argue: That is in the statute.

Miss Campbell: That is right. In respect of Canada pension, before you qualify for any retroactivity, you have to be over 70, and then you only get one year.

Senator Bourget: I understand.

The Chairman: Senator Macdonald also raised a point in connection with section 64 of the Canada Pension Plan, as follows:

The existing section 64 itself is a very good section. It provides that a benefit shall not be assigned, charged, attached, anticipated or given as security,

and any transaction purporting to assign, charge, attach, anticipate or give as security a benefit is void. In effect, the insertion of subsection (2) will mean that this fine existing provision will not apply in cases where welfare is given to a person who has qualified but has not received his or her Canada pension.

Is that correct?

Mr. Kelm: There are two points I should make in that connection, Mr. Chairman. At the present time, in most of the welfare programs operated by the provinces, if there has been an overpayment, the province has to recover, and recoveries are taking place right now. This does not really institute a policy of recovery, but simply makes it possible for the recovery to take place out of the back-pay cheque.

The Chairman: Are the provinces compelled by law to recover?

Mr. Kelm: Yes.

The Chairman: And is that under a federal statute, or under the law of the province concerned?

Mr. Kelm: In respect of programs shared by the federal government, it is part of the agreement that they must recover.

The Chairman: Senator Macdonald, in his speech during second reading debate, went on to refer to remittance of overpayments and the discretion of the minister in that regard, saying that it was more or less limited to \$50.

Mr. Kelm: There are several criteria on which recovery can be waived, one of which is where the amount owing is not worth recovering. A rule of thumb in that connection is that if the sum is less than \$50, it is not worth recovering. In terms of the question of the minister exercising a discretion where recovery would apply hardship, there is no dollar limit.

The Chairman: There is no dollar limit where hardship is concerned?

Mr. Kelm: That is correct.

Senator Inman: What is the most advanced age at which you can apply for Canada pension?

Mr. Kelm: There is no upper limit, senator. There is a limit on retroactivity of one year on reaching the age of 70. In other words, a person applying at the age of 73 would only receive retroactive payments back to 1972.

The Chairman: Are there any further questions?

Senator Inman: I move that the bill be reported without amendment.

The Chairman: Is it agreed, honourable senators?

Hon. Senators: Agreed.

The committee adjourned.



FIRST SESSION—THIRTIETH PARLIAMENT
1974-75

THE SENATE OF CANADA

PROCEEDINGS OF THE
STANDING SENATE COMMITTEE ON

HEALTH, WELFARE AND SCIENCE

The Honourable CHESLEY W. CARTER, *Chairman*

Issue No. 5

WEDNESDAY, APRIL 30, 1975

THURSDAY, MAY 1, 1975

Complete Proceedings on Bill C-33, intituled:

“An Act respecting the export from Canada of cultural property and the import into Canada of cultural property illegally exported from foreign states.

REPORT OF THE COMMITTEE

(Witnesses: See Minutes of Proceedings)

THE STANDING SENATE COMMITTEE ON
HEALTH, WELFARE AND SCIENCE

The Honourable C. W. Carter, *Chairman*.

The Honourable M. Lamontagne, P.C.,
Deputy Chairman.

and

The Honourable Senators:

Argue, H.	Goldenberg, H. C.
Blois, F. M.	Inman, F. E.
Bonnell, M. L.	Langlois, L.
Bourget, M.	Macdonald, J. M.
Cameron, D.	McGrand, F. A.
Choquette, L.	Neiman, J.
Croll, D. A.	Norrie, M. F.
Denis, A.	*Perrault, R. J.
*Flynn, J.	Smith, D.
Fournier, S.	Sullivan, J. A.—(20)
(<i>de Lanaudière</i>)	

**Ex officio* member

(Quorum 5)

Order of Reference

Extract from the Minutes of Proceedings of the Senate,
Wednesday, April 23, 1975:

The Order of the Day being read,
With leave of the Senate,

The Honourable Senator Grosart resumed the debate on the motion of the Honourable Senator Lamontagne, P.C., seconded by the Honourable Senator Connolly, P.C., for the second reading of the Bill C-33, intituled: "An Act respecting the export from Canada of cultural property and the import into Canada of cultural property illegally exported from foreign states".

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Lamontagne, P.C., moved, seconded by the Honourable Senator Connolly, P.C., that the Bill be referred to the Standing Senate Committee on Health, Welfare and Science.

The question being put on the motion, it was—
Resolved in the affirmative.

Robert Fortier
Clerk of the Senate

Minutes of Proceedings

Wednesday, April 30, 1975.

Pursuant to adjournment and notice the Standing Senate Committee on Health, Welfare and Science met this day at 9:34 a.m., the Chairman, the Honourable Senator Carter, presiding.

Present: The Honourable Senators Carter (*Chairman*), Bonnell, Bourget, Cameron, Fournier (*de Lanaudière*), Inman, Lamontagne, Macdonald, McGrand and Norrie. (10)

Present, but not of the Committee: The Honourable Senator Bélisle.

In attendance: R. L. du Plessis, Department of Justice, Legal Adviser to the Committee.

After discussion and on motion of the Honourable Senator Fournier (*de Lanaudière*), it was *Resolved* to appoint a Steering Committee composed of the Honourable Senators Blois, Bourget, Cameron, Carter, Croll and Lamontagne.

On motion duly put it was *Resolved* that the Committee should hear witnesses who may wish to make representations on Bill C-33, "An Act respecting the export from Canada of cultural property and the import into Canada of cultural property illegally exported from foreign states".

The Committee proceeded to the consideration of Bill C-33, "An Act respecting the export from Canada of cultural property and the import into Canada of cultural property illegally exported from foreign states".

The following witnesses were heard in explanation of the Bill:

The Honourable Hugh Faulkner, P.C., M.P.,
Secretary of State of Canada;

Mr. Ian C. Clark,
Special Adviser,
Arts and Culture Branch,
Department of the Secretary of State;

Mr. H. A. Malcolmson,
Toronto, Ontario.

Messrs. Faulkner and Malcolmson both made an opening statement. The witnesses then answered questions.

The Chairman called Clause 1.

After debate, Clause 1 was allowed to stand.

Clause 2 carried.

Clauses 3 to 11, both inclusive, were allowed to stand.

On Clause 12, the Honourable Senator Lamontagne moved that Clause 12 be amended as follows:

Page 7: Strike out line 41 and substitute therefor the following:

"tion of the Review Board in which case he shall forthwith send a written notice to that effect to the applicant."

The question being put on the said Motion, it was agreed to.

Clause 12, as amended, carried.

Clauses 13 and 14 were allowed to stand.

At 12:05 p.m. the Committee adjourned until later this day.

AFTERNOON MEETING

Pursuant to adjournment and notice the Standing Senate Committee on Health, Welfare and Science resumed sitting at 3:40 p.m., the Chairman, the Honourable Senator Carter, presiding.

Present: The Honourable Senators Carter (*Chairman*), Bonnell, Bourget, Cameron, Fournier (*de Lanaudière*), Inman, Lamontagne, Norrie and Smith. (9)

In attendance: R. L. du Plessis, Department of Justice, Legal Adviser to the Committee.

The Committee resumed consideration of Bill C-33, "An Act respecting the export from Canada of cultural property and the import into Canada of cultural property illegally exported from foreign states".

The following witness was heard in explanation of the Bill:

Mr. Ian C. Clark,
Special Adviser,
Arts and Culture Branch,
Department of the Secretary of State.

The Chairman called Clause 15.

On Clause 15, the Honourable Senator Lamontagne, moved that Clause 15 be amended as follows:

Page 8: Strike out lines 32 to 40 and substitute therefor the following:

"(2) The members of the Review Board, other than the Chairman and two other members who shall be

chosen generally from among residents of Canada, shall be chosen in equal numbers

(a) from among residents of Canada who are or have been officers, members or employees of art galleries, museums, archives, libraries or other similar institutions in Canada; and

(b) from among residents of Canada who are or have been dealers in or collectors of art,"

The question being put on the said Motion, it was agreed to.

Clause 15, as amended, was carried.

Clause 16 carried.

Clause 17 was allowed to stand.

Clauses 18 to 22, both inclusive, were carried.

On Clause 23 the Honourable Senator Lamontagne moved that Clause 23 be amended as follows:

Page 11: Strike out line 19 and substitute therefor the following:

"notice of refusal under section 10 or a notice under section 12 may,"

Page 11: Strike out line 21 and substitute therefor the following:

"the notice was sent, by notice in"

The question being put on the said Motion, it was agreed to.

After further discussion it was agreed that Clause 23, as amended, be allowed to stand.

Clauses 24 and 25 were carried.

Clause 26 was allowed to stand.

Clauses 27 to 52, both inclusive, were carried.

After discussion, Clauses 3 to 7, both inclusive, carried.

At 5:20 p.m. the Committee adjourned until Thursday, May 1, 1975 at 9:00 a.m.

Thursday, May 1, 1975.

Pursuant to adjournment and notice the Standing Senate Committee on Health, Welfare and Science met this day at 9:00 a.m., the Chairman, the Honourable Senator Carter, presiding.

Present: The Honourable Senators Carter (*Chairman*), Bonnell, Bourget, Cameron, Fournier (*de Lanaudière*), Inman, Lamontagne, Norrie and Smith. (9)

Present, but not of the Committee: The Honourable Senator Molson.

In attendance: R. L. du Plessis, Department of Justice, Legal Adviser to the Committee.

The Committee resumed consideration of Bill C-33, "An Act respecting the export from Canada of cultural property and the import into Canada of cultural property illegally exported from foreign states".

The following witness was heard in explanation of the Bill:

Mr. Ian C. Clark,
Special Adviser,
Arts and Culture Branch,
Department of the Secretary of State.

The witness made a short opening statement.

The Chairman called Clause 8.

On Clause 8, the Honourable Senator Bonnell moved that Clause 8 be amended as follows:

Page 6: Strike out line 18 and substitute therefor the following:

"Review Board and the Minister."

Page 6: Strike out line 47 and substitute therefor the following:

"copy of that advice to the Review Board and the Minister."

The question being put on the said Motion, it was agreed to.

Clause 8, as amended, carried.

Clauses 9 to 17, both inclusive, carried.

On Clause 23, the Honourable Senator Lamontagne moved that Clause 23 be amended as follows:

Page 11: Strike out lines 25 to 28 and substitute therefor the following:

"(2) The Review Board shall review an application for an export permit and, unless the circumstances of a particular case require otherwise, render its decision within"

The question being put on the said Motion, it was agreed to.

Clause 23, as amended, carried.

On Clause 26, the Honourable Senator Lamontagne moved that Clause 26 be amended as follows:

Page 14: Strike out lines 22 to 25 and substitute therefor the following:

"(4) The Review Board shall consider a request made under subsection (1) and, unless the circumstances of a particular case require otherwise, make a determination"

The question being put on the said Motion, it was agreed to.

Clause 26, as amended, carried.

The title carried.

The preamble carried.

Bill C-33, as amended, carried.

On motion duly put, it was *Resolved* to report the Bill as amended.

At 9:15 a.m. the Committee adjourned to the call of the Chair.

ATTEST:

PATRICK J. SAVOIE
Clerk of the Committee

Report of the Committee

Thursday, May 1, 1975.

The Standing Senate Committee on Health, Welfare and Science to which was referred Bill C-33, intituled: "An Act respecting the export from Canada of cultural property and the import into Canada of cultural property illegally exported from foreign states", has in obedience to the order of reference of April 23, 1975 examined the said Bill and now reports the same with the following amendments:

1. *Page 6:* Strike out line 18 and substitute therefor the following:

"Review Board and the Minister."

2. *Page 6:* Strike out line 47 and substitute therefor the following:

"copy of that advice to the Review Board and the Minister."

3. *Page 7:* Strike out line 41 and substitute therefor the following:

"tion of the Review Board, in which case he shall forthwith send a written notice to that effect to the applicant."

4. *Page 8:* Strike out lines 32 to 40 and substitute therefor the following:

"(2) The members of the Review Board, other than the Chairman and two other members who shall be chosen generally from among residents of Canada, shall be chosen in equal numbers

(a) from among residents of Canada who are or have been officers, members or employees of art galleries, museums, archives, libraries or other similar institutions in Canada; and

(b) from among residents of Canada who are or have been dealers in or collectors of art,"

5. *Page 11:* Strike out line 19 and substitute therefor the following:

"notice of refusal under section 10 or a notice under section 12 may,"

6. *Page 11:* Strike out line 21 and substitute therefor the following:

"the notice was sent, by notice in"

7. *Page 11:* Strike out lines 25 to 28 and substitute therefor the following:

"(2) The Review Board shall review an application for an export permit and, unless the circumstances of a particular case require otherwise, render its decision within"

8. *Page 14:* Strike out lines 22 to 25 and substitute therefor the following:

"(4) The Review Board shall consider a request made under subsection (1) and, unless the circumstances of a particular case require otherwise, make a determination"

Respectfully submitted.

Chesley W. Carter,
Chairman.

The Standing Senate Committee on Health, Welfare and Science

Evidence

Ottawa, Wednesday, April 30, 1975.

The Standing Senate Committee on Health, Welfare and Science, to which was referred Bill C-33, respecting the export from Canada of cultural property and the import into Canada of cultural property illegally exported from foreign states, met this day at 9.30 a.m. to give consideration to the bill.

Senator Chesley W. Carter (*Chairman*) in the Chair.

The Chairman: Honourable senators, before considering Bill C-33, there are one or two small preliminary matters I would like to attend to. The first has to do with a steering committee. As you know, a coordinating committee has been set up to make a survey of the work of Senate committees. It is the consensus of chairmen that there should be a steering committee, so, in consultation with the whips, I have selected the following members to constitute a steering committee: in addition to Senator Lamontagne and myself, the nominations are Senator Blois, Senator Bourget, Senator Cameron and Senator Croll. I would like to have the committee as a whole confirm those nominations.

Senator Fournier (de Lanaudière): I so move.

The Chairman: It has been moved by Senator Fournier (de Lanaudière) and seconded by Senator Norrie. Are all in favour?

Hon. Senators: Agreed.

The Chairman: The second matter concerns the hearing of outside witnesses. I have approached those whom I have just mentioned as being members of the steering committee, and they have agreed that we should hear outside witnesses who may want to appear. I would like to have that decision also confirmed by the committee as a whole. Is it agreed?

Hon. Senators: Agreed.

The Chairman: We come now to Bill C-33. Our first witness is the Secretary of State, the Honourable Hugh Faulkner. Mr. Faulkner, do you wish to make a presentation?

The Honourable Hugh Faulkner, Secretary of State of Canada: I have a short statement to make, Mr. Chairman.

Senator Lamontagne: Mr. Chairman, as a matter of procedure, when do you intend to call those outside witnesses?

The Chairman: We have one here this morning—Mr. Malcolmson. As far as I know, he is the only witness who is to appear today. Mr. Thompson, I understand, was unable to make it today.

Hon. Mr. Faulkner: Mr. Chairman and honourable senators, I would like first to express my thanks to all honourable senators who have taken a great interest in this particular piece of legislation to which I attach considerable importance.

If I may, I would like particularly to thank Senator Lamontagne and Senator Grosart for what I consider to be very knowledgeable and sensitive speeches in support of this legislation, which, I think we all appreciate, is by necessity complex but has the purpose of helping to preserve our heritage in movable cultural property.

The bill before us, C-33, has gained all-party support in the other place and has elicited a high degree of support in the country at large. I might add parenthetically that this interest is now becoming manifest from a variety of sources. Owners of cultural property are making inquiries of the Department of Finance, and some of our major institutions are wondering whether it is in place so that they can take advantage of it to make contributions to some of our institutions—which is what we hoped would happen.

I would like to emphasize, however, that if all the elements who are affected by this bill—and they are, as you know, the federal government and its agencies, provincial governments and their agencies, custodial institutions, the trade, collectors, and Canadians generally who are concerned about heritage conservation—are not in total agreement with every provision which may be necessary to protect the interest of some other group, all agree that the legislation as a package is fair and has been specifically designed to protect the legitimate interests of all concerned.

We have tried, and I believe successfully, to strike that delicate balance between constraints and incentives which Canadians expect and which is necessary to guarantee the successful implementation of this bill.

I should like to turn briefly to some provisions in the legislation, or purposely left out of it, which have been the subject of debate, or which may not have been fully understood and which require additional clarification.

First of all, may I say that Senator Lamontagne has spoken to me about one or two amendments he would like to see made to the bill. He has my full support in broadening the choice for professional nominations to the review board by proposing an amendment to clause 15. He also has my full support in widening the protection of owners, in the interest of individual rights, by proposing amendments to clauses 12 and 23(1). I take it Senator Lamontagne will be proposing these amendments later. If I may say so, I am very grateful to Senator Lamontagne for his very positive suggestions, which stem from his close and detailed examination of this bill.

I think Senator Grosart answered in spirit as well as I could many of the objections in principle voiced by Senators Everett and O'Leary. However, I should like to touch on one aspect of the bill upon which Senator Everett focused his concern, that being the age and value limits set out in the legislation upon which the control list will be based.

The control list to be established by the Governor in Council under clause 3 will be similar in purpose to the export control list established by the Governor in Council under the Export and Import Act. It can be varied as circumstances require, and it is intended that it should be so varied with time and changing circumstances. The categories of objects that may be included in the control list are set out in this clause, and certain minimum age and value limits are established beneath which the Governor in Council cannot go without an amendment to the statute. The Governor in Council can and may set the age requirements higher, if this is found necessary, and he will set value minimums higher, for instance, in respect of inflation, or if the limits finally decided upon for the control list prove with experience to be too low.

These values represent rock bottom minimums which, I repeat, cannot be lowered without new legislation. They have been drawn up in consultation with experts, and the consensus is that they are reasonable as a point of departure.

I should like to deal now with the 35-year rule, which has caused some comment.

I would like to speak about the principles that the bill incorporates in the case of objects imported into Canada which owners wish to export. Here the aim must clearly be to give collectors and the trade as much freedom as possible. It was clear that the only practical test is the length of time an object has been in Canada. In establishing criteria, it was recognized that too short a time would cause genuine hardship to owners and dealers, and if the time is too long, genuine national treasures may be lost without being given proper consideration.

Some collector-investors have questioned what is accomplished by including on the control list art of foreign origin, particularly given the relative paucity of international art of high quality in the country. Some have stressed that Canada is a net importer of classical art, and that any restrictions on their future ability to export an object they have imported will inhibit them from acquiring international works, and that as a result our appreciation of art will become more insular.

The government has adopted the principle that objects which have in the past entered Canada, and which were not made here originally, should be allowed to become national treasures through association. Champlain's astrolabe was not made here, although it was found here; the portraits of Madame Mercier by the 18th century French painter, Jean-Baptiste Greuze, because it was formerly part of the Van Horne collection, was repatriated by the Emergency Purchase Fund in 1972 and will join other works from this famous collection in the Montreal Museum of Fine Arts on the ground of its association with Canada.

Are we to deny that the Reliquary of St. Jean de Brébeuf, made anonymously in France in the mid-seventeenth century, and now in the Hotel-Dieu in Quebec

City, has become a cultural citizen? Or the fine 18th century "secretary" which belonged to Benedict Arnold and which is in a collection open to the public in Rothsay, New Brunswick? Should not a more recent artistic masterpiece from abroad which has found its way into the country—perhaps "the Archer" by Henry Moore, now mounted in front of Toronto City Hall—be allowed to become a national treasure? These are the questions, I think, which have to be posed under the 35 year rule.

Thus Bill C-33, as provided for in the British and French export control systems, among others, includes a time test. In Canadian terms, the practical test necessary for this "acculturation" of a foreign object to take place will be 35 years, and I would point out that this provision is not subject to arbitrary change without new legislation being required.

A permit is issued forthwith by the customs, if the person applying for a permit for an object on the control list establishes that the object in respect of which the application is made was imported into Canada within the 35 years immediately preceding the date of application.

I perhaps should interject here, begging the question, if you like, of how will the owner establish to the satisfaction of the customs officer that the object he wishes to export has been in the country less than 35 years? On the application form for an export permit the owner, if it is claimed that the object has been imported into Canada within the last 35 years, will make a declaration to that effect and attach any available supporting evidence. The customs officer would not question such information unless he suspected evidence of fraud. Otherwise, a permit will be granted forthwith.

Allow me to review with you those aspects of the bill which protect the interests of collectors of international art. In the first place, the object must be on the control list; secondly, it must have been here 35 years. After that it must be considered, in the opinion of the expert examiner and, perhaps, ultimately the review board, to be of a class or kind, the loss of which would significantly diminish our national heritage.

I would remind you that to be subject to control, the artist must not be living and the object must be at least 50 years old. As the bill is concerned with objects of a high degree of national importance, obviously, the review board, and prior to the board the expert examiner, will be demanding the highest standards for all objects, particularly those which are no of Canadian origin. Unless they are really outstanding, having some association with Canada, no institution will be interested in purchasing them.

In order for the review board to establish a delay period for an object as the result of an appeal, it does so, "if it is of the opinion that a fair offer to purchase the object might be made . . .", as is set out under clause 23(5)(a). Thus the first protection for the collector is that the control system is interested in objects of high quality and close association with Canada; secondly, that there is a likelihood of interest on the part of an institution to purchase it.

Once a delay period goes into effect, the object is eligible for tax relief, which makes the likelihood of the interested institution and the owner reaching agreement over a sale all the more likely. If, however, at the

expiration of the delay period, no offer to purchase has been made by an institution, the export permit will be granted.

It would seem that some collectors have not fully realized the extent to which the act protects them from undue interference in the matter of foreign cultural property. It is, therefore, difficult to see how the 35-year rule will discourage them in any way from importing objects from abroad in the future. On the contrary, those who are astute stand to gain by doing so, if they choose wisely and well, as an outstanding foreign object will be eligible for tax relief in the case of referral to the board when an owner and institution are negotiating a gift or sale, even when export is not involved.

Let me briefly touch on some other points which have been raised during debate in the Senate. Why did we not include an appeal procedure to a ruling by the review board? My answer is that if the review board, in arriving at a decision, denies natural justice, then the owner of the object may make application to a federal court to upset the decision on that ground. However, to provide an appeal for a decision with respect to the quality of an object would be unnecessary, in my opinion, and, I believe, misguided. My reasons for that position are threefold:

1. The delay period established by the board will likely have expired and the object either purchased or an export permit issued before an appeal would be heard.

2. A judge of the Federal Court, or the Supreme Court of Canada, would not, I expect, be a person qualified to overturn a decision of the review board as to the quality or national importance of an object. I ask whether a court would wish to be placed in that situation.

3. My third reason is really practical rather than juridical. Would the owner of an object really want decisions as to its quality and national importance made by persons who are not qualified to judge these objects on their merits, even though they are expert judges of the law? Or would they prefer the considered opinion of an independent body of professionals representative of those interests most closely connected to the matter, chosen for their competence to make such judgments?

I remind you that the review board is entitled to seek advice from the appropriate federal agencies and may obtain opinions as to quality and value from experts wherever they may be found.

Finally, I should like to turn to the question of ministerial permits. Some have questioned the purpose of the general permit and the open general permit. Under the British system the bulk licence and the open general licence will be defined in the regulations and will have specific purposes.

The general permit refers to a kind of bulk licence which can be issued to a reputable dealer specializing in the import-export trade, say of antique furniture, so as not to unduly and unnecessarily interfere with his business. Such a dealer, on application, and in accordance with the regulations to be established under the act, and on giving proper understanding, would be allowed to export objects which, although they might technically fall within the control, are not in themselves of such importance that an export permit would

not be issued if applied for. Of course, the minister has the power to withdraw this privilege if it is abused.

The open general permit refers to a type of permit applicable to all persons, similar to the general export permits issued under the Export and Import Act. It would be published in the *Canada Gazette*. They, in effect, create exceptions to the control list while they are in force. For instance, a particular class of object subject to control might be in abundant supply, say sterling silver teaset, and the ability to exempt such a particular class of object, as under the British system, for a period which can be limited assures the necessary flexibility in the control system.

Mr. Chairman, I have tried to touch on some matters that I know have been of concern to honourable senators. There may still be some questions, which I would be pleased to try to answer. I conclude by thanking you for your very kind attention, and hope that my introductory statement has not abused your patience.

The Chairman: Thank you very much, Mr. Faulkner. Honourable senators, I should have mentioned that sitting on the minister's right is Mr. Ian Clark, Special Adviser to the minister. I apologize to Mr. Clark for not introducing him earlier.

I understand the minister's time is limited, so we should try to confine our questions to questions on policy as much as possible. If the minister has to go, Mr. Clark will be available to answer any other questions.

How do you wish to proceed? Shall I call clause 1 and ask general questions?

Senator Lamontagne: First of all, Mr. Chairman, I think we have the wrong bill. We have the bill that was reported by the committee in the other place, but it does not contain all the amendments that were proposed by the minister before third reading.

The Chairman: That will be rectified. In the meantime, I will call clause 1. Shall clause 1 carry?

Senator Lamontagne: I suppose it would be very difficult to make a distinction between policy questions and more or less legal or technical questions. If, in the process of examining different clauses, there are policy questions involved and the minister is not available, perhaps he may come back later on to deal with those questions.

The Chairman: I do not know how much time the minister has this morning.

Hon. Mr. Faulkner: My problem is one of caucus really. I could stay for a few more minutes, or senators could go through the bill with Mr. Clark here to answer technical questions, highlighting policy questions which I could come back to deal with specifically, if you prefer that. I could stay here for a few more minutes. I am really at your disposition. I think it would be more helpful to run through the bill now, when Mr. Clark can answer technical questions, and if as a result you feel there are policy questions that remain unanswered I would be delighted to come back and deal with those specifically.

The Chairman: Would you be available this afternoon after 3.30?

Hon. Mr. Faulkner: I have a session with the Native Council of Canada. I may not be as fresh as I ought to be after that! That will be quite a session. What about tomorrow or tonight?

The Chairman: Possibly tomorrow.

Senator Lamontagne: I am available then. I do not know about other honourable senators.

The Chairman: We have other committees. You mean tomorrow morning?

Hon. Mr. Faulkner: Can you start at 9?

The Chairman: I understood you would not be available tomorrow.

Hon. Mr. Faulkner: There is a Cabinet meeting, but I could be here at 9, if that is not too much trouble. I could spend at least an hour with you then. Cabinet does not start until 10. Or tomorrow afternoon, of course.

Senator Bourget: We could sit tomorrow morning at 9 o'clock.

Hon. Mr. Faulkner: If you decide to do that, having gone through the bill, I could be here then.

Senator Bourget: What time is the Cabinet?

Hon. Mr. Faulkner: Ten o'clock.

Senator Bourget: There are some other committees. I do not know how many committees are sitting tomorrow.

The Chairman: There were two committees set for tomorrow morning, but the Standing Senate Committee on Foreign Affairs has been cancelled. The Standing Senate Committee on National Finance will sit, but Foreign Affairs, which was clashing with the Finance Committee, has been cancelled. We could meet at 9 o'clock, if that is the wish of the committee.

Senator Bélisle: Suppose we go through the bill. As the minister has said, if there are some policy matters that need to be discussed we could have him here tomorrow. Let us go through the bill first. There are three meetings tomorrow.

The Chairman: I have called clause 1. On that clause you can ask questions on any clause. Is that satisfactory? Any clause you have a question on you can still ask on clause 1. Tomorrow we can go through the bill clause by clause, because I understand there will be some amendments proposed.

Senator Lamontagne: Shall we proceed to study it clause by clause right now?

The Chairman: Very well. Shall clause 1 carry?

Senator Bourget: That is the title. Perhaps we should deal with the title later on, when we are through with the bill.

The Chairman: Yes. Clause 2?

Senator Lamontagne: I have only one question on clause 2. I think I know the answer. It was raised in the Senate during the debate. I want to make sure that the definition of an institution includes private institutions,

such as a museum or archives in a university, or institutions such as the Montreal Museum of Fine Arts, institutions that are private in the more or less legal sense but are publicly owned and at the disposal of the public.

Hon. Mr. Faulkner: I think the short answer is yes. The definition, though, is intended to ensure that only museums, art galleries, libraries and archives that will benefit from the bill and related amendments to the Income Tax Act are public institutions, publicly owned and opened to the public; I think that is the operative part of the definition.

Senator Lamontagne: This question was raised by Senator Hicks, who has a very direct connection with a well-known university in Canada.

The Chairman: Are there any more questions on clause 2? . . . Shall we let clause 2 stand until tomorrow, or shall clause 2 carry?

Hon. Senators: Carried.

The Chairman: Are there any questions on clause 3?

Senator Lamontagne: The minister has referred to this matter this morning, but I want to make it clear again that the minister cannot lower the minimums provided in this clause. However, the Governor in Council can, by order in council, increase those minimums so as to take care of inflation or changes in the value of objects of art in Canada.

Hon. Mr. Faulkner: That is right.

Senator Bourget: This has not yet been established; it will be established in the future. How long will it take to establish it?

Mr. Ian C. Clark, Special Adviser, Arts and Culture, Department of the Secretary of State: Not very long. These are the parameters. After more consultation with those concerned we will be able to set the prices at a more reasonable level. We will want to even this out and make sure that we are reflecting the market trend.

Senator Bourget: I understand that will be an open list?

Mr. Clark: That is correct.

Senator Bourget: Which could be added to from year to year, I suppose?

Mr. Clark: Yes.

Senator Bélisle: Clause 3(2) provides that the Governor in Council may include in the Control List objects the export of which he deems necessary to control in order to preserve the national heritage in Canada. Does that mean that if, for example, I have something valuable in the possession of my family I cannot export it? Does this apply only to institutions?

Hon. Mr. Faulkner: No, it would apply to—

Senator Bélisle: Every article?

Hon. Mr. Faulkner: No, only to those articles which fall within the parameters of the Control List. It would

be an extraordinary piece of art that you would have at home. I have no doubt that you have several.

Senator Bélisle: For instance, suppose we are religious and we have a 500-year old Bible which has been classified as an important article, could we not take it to the United States?

Hon. Mr. Faulkner: Let us suppose for the sake of argument that this Bible would fall within the Control List. This legislation does not prevent you from eventually selling it. It provides that Canadian institutions must have a first crack at it. In other words, before you can export it, Canadian institutions must have a chance to decide whether they wish to buy it. If no one wishes to buy it in Canada, you are free to export it. This law does not prevent the export of our treasures, but provides a delay prior to export sale for Canadian institutions to decide whether they wish to buy the article.

Senator Bélisle: If one of the Canadian institutions offered me only five and the other party offered 10, would I be compelled to sell it for the five?

Hon. Mr. Faulkner: No, but it is important to recognize that this bill does provide an incentive, in addition to the delay period, for Canadian institutions to buy, because it contains tax provisions both from your point of view and that of the institutions.

Senator Bourget: But in such a case no one would be prevented from selling the object in the United States or Europe. Let us suppose there was a big difference in offers. Senator Bélisle refers to a Bible, but in respect of other articles there could be a difference of thousands of dollars in the offer. In that case would the government interfere and prevent the Canadian from selling?

Hon. Mr. Faulkner: No, the price would be determined by the market. In other words, if the senator has an offer for his Bible in New York for \$1,000 and the Sudbury museum will offer him only \$500, the price would no doubt be set at \$1,000.

Senator Bourget: Suppose that you, as the minister, or the Review Board, considered that object to be very important for Canada, in view of the fact that it had a very great value could you contribute to that fund which would be created?

Hon. Mr. Faulkner: Yes, at the end of the bill you will find a provision for funds which will be available to assist, not only the national institutions such as the National Gallery or the Museum of Man but, in fact, other institutions throughout the country in cases in which it is deemed necessary or advisable to assist in the purchase of important works.

Senator Lamontagne: Suppose, however, Mr. Chairman, that I am a Canadian and I wish to go and live in the Bahamas and do not wish to sell my cultural property, but take it with me. Would I need an export permit and would I be subjected to all this because I did not wish to sell?

Hon. Mr. Faulkner: I am not sure of the exact procedures, but the provision would be that you would sign an undertaking to repatriate the articles.

Mr. Clark: That you would not dispose of them abroad. If you were taking the articles abroad to dispose of them, you would have to go through the procedure.

Senator Lamontagne: If I go abroad and stay there more or less indefinitely and two years after I have left the country I wish to sell such objects, would I have to return here and go through all that procedure?

Mr. Clark: Yes, sir.

Hon. Mr. Faulkner: In the case of those works of art contained in the Control List.

Mr. Clark: You would have signed a declaration that you would not dispose of them while they are in your possession, for instance in Boston, or while you might be living in England or wherever it might be.

Senator Cameron: What would be the situation in respect of articles on a ship that sank, assuming they were not damaged beyond repair or on an aircraft? This has happened from time to time.

Mr. Clark: If you would refer to clause 3.(2)(a)—

Hon. Mr. Faulkner: The only problem with that clause is that I do not know if it is entirely clear as to the extent of the territorial sea of Canada. However, assuming that question is resolved the clause will be clear. I take it, senator, that you are referring to an aircraft loaded down with pre-Columbian art which crashes in Banff, which is yours and none of it is broken. It is a somewhat hypothetical situation.

Senator Cameron: I will take a chance on that. My point referred to objects going down outside territorial limits.

Hon. Mr. Faulkner: Outside the territorial limits would not apply.

Senator McGrand: My question relates to the reference to archaeological objects. On the northern tip of Newfoundland there are excavations of an old Viking settlement. It is possible that someone who collects that type of object would come up and buy the materials, take them back to Kentucky or somewhere and display them in the same manner as was done with the London Bridge. What does this legislation provide in cases of the purchase and export of that type of treasure?

Mr. Clark: Almost all provinces have legislation or regulations concerning archaeological material. The purpose of this provision is to assist those provinces which wish to control pot-hunting and the erasing of archaeological sites. When the expert examiner is aware of this, and he no doubt would be the provincial archaeologist, he will be able to look into the question of any provincial law being broken by pot-hunting.

Hon. Mr. Faulkner: So, in fact, this legislation would be complementary to provincial legislation dealing with archaeological digs. Some provinces have legislation concerning archaeological digs, pot-hunting as my learned adviser terms it, and where that legislation is in place this legislation would complement it in the sense that the provincial archaeologist would monitor what was coming out of this Viking dig.

Senator McGrand: But if a province had material of this value and no particular law covering it, this does not interfere with the jurisdiction of the province. If it wished to sell its archaeological treasures, it could do it; is that correct?

Hon. Mr. Faulkner: It is binding on institutions also, with the consent of the provinces. We have letters from all provinces supporting this legislation, saying that they welcome its framework.

Senator Bourget: Following that particular question, maybe this should come under the Review Board, but will there be on the Review Board appointees from each province?

Hon. Mr. Faulkner: No, I do not think we have had any particular representations to that effect from the provinces. They were more concerned that the Review Board be made up of recognized experts on both sides of the equation.

The Chairman: Are there any further questions on clause 3? Honourable senators, I am a little concerned about carrying these clauses at this time, because we have another witness to hear and he may wish to raise some questions on these clauses. I think it would be better if we stand the clauses and at the end we can move the bill, if we wish, after we have amended any clauses which the committee wishes to amend. Is that agreed?

Hon. Senators: Agreed.

The Chairman: Shall clause 3 stand?

Hon. Senators: Agreed.

The Chairman: Clause 4—permit officers. Are there any questions on clause 4?

Senator Bourget: Does that mean that a permit officer will determine at each port of entry?

Mr. Clark: No. This would be a permit officer in the customs office. He has no aesthetic judgment to make.

Hon. Mr. Faulkner: He just has to read the list.

The Chairman: Shall clause 4 stand?

Hon. Senators: Agreed.

The Chairman: Clause 5—expert examiners. Are there any questions on clause 5? Shall clause 5 stand?

Senator Cameron: I presume that the qualifications of the examiner are spelled out somewhere?

Mr. Clark: Yes, in the regulations. In most cases the term "expert examiner" is used to cover an institution. The only case where it would be an individual would be where the institutional range of expertise was not sufficient to cover the bill, and you might want to take advantage of a university professor to supplement what the local custodial institutions would have as resources within that institution—the provincial archives, and that sort of thing.

The Chairman: Are there any further questions? Clause 5 stands.

Clause 6—Export Permits.

Senator Lamontagne: On clause 6, what happens if a foreigner—let us say an American—acquires a piece which is on the control list? I don't understand this legislation applies only to residents of Canada.

Mr. Clark: Yes, it does, in terms of the person who has to obtain a permit. If you will note clause 34, it says that all persons must obtain a permit. We are saying that a non-Canadian resident must apply for his permit through Canadian auspices, so that—

Senator Lamontagne: But he is not forced to, because he has no obligation under this legislation. He is not a resident of Canada.

Mr. Clark: If you look at clause 34. We have the resident of Canada here as the definition. It has to be a resident of Canada who applies for the permit. If you look at clause 34, I think it will tie it in for you. It says:

No person shall export or attempt to export from Canada any object included in the Control List—

In the regulations it will be stated that those who are not Canadian residents must apply for a permit through a Canadian resident. This is so that we can control what happens afterwards.

Senator Inman: I was wondering what would happen if a Canadian had an object of art and wanted to send it to a relative in another country?

Mr. Clark: This would be in a case that was on the control list? Therefore if a person wanted to lend it to a relative there would be no problem. This would be in the regulations. It could go out and come back in. But if the question was to give it in perpetuity to that person, and it did fall within the control list, it would have to go through the review board process.

The Chairman: Are there any further questions on clause 6?

Senator Lamontagne: Again on clause 6, it seems to me there is a problem here, because if an object under clause 6(b) or (c) is loaned or sent abroad for purposes of an exhibition, it seems to me that the owners of the property would have to obtain a permit, and it would be an automatic permit under clause 6.

Hon. Mr. Faulkner: That is right.

Senator Lamontagne: But if they wanted to export it for the purpose of selling it, they would be penalized, because of subclause (a). They would have had a permit prior to the application for export and therefore they would not, because they had loaned it previously for an international exhibit, get an automatic permit under clause 6. As the clause stands at the moment, you would really discourage people from participating in international exhibitions or things of that sort.

Mr. Clark: Clause 6(a) contains the condition that the permit will be issued forthwith only if the object "was not exported from Canada under a permit issued under this Act prior to that importation". That is the point.

This provision was added to prevent people fraudulently exporting under the 35-year rule with the intention of reimporting, to start a count for the rule over again. It also has the effect that entry and departure from Canada of an object for exhibition or restoration does not break the 35-year rule.

We believe that the case you have described can best be handled under clause 14(1) where the minister can issue such an individual with a general permit after examining the facts. This will cause a brief delay beyond what is normally a "forthwith" situation, but it will be dealt with with despatch. Obviously it has to be.

Senator Lamontagne: You mean that if he had loaned the property before and had received an automatic permit, if he were to reapply for export or, for selling, he would not be able to get an automatic permit?

Mr. Clark: That is right.

Senator Lamontagne: He could then apply to the minister and receive a general permit, under clause 14?

Mr. Clark: That is right.

Senator Lamontagne: While it would not be an automatic permit, it could be dealt with fairly quickly.

Mr. Clark: With despatch—the only point being, as I am sure you understand, is that we would want to take a quick look at it, just to make sure.

The Chairman: Are there any further questions on clause 6? Shall clause 6 stand?

Hon. Senators: Agreed.

The Chairman: Clause 7—determination by permit officer. Are there any questions on clause 7? Shall clause 7 stand?

Hon. Senators: Agreed.

The Chairman: Clause 8—determination by expert examiner. Are there any questions on clause 8?

Senator Lamontagne: On clause 8(2), the examiner is asked, under this subsection, to send a copy of his advice to the Review Board, and the Review Board cannot do anything about it because it can act only on an application by an applicant. The Review Board can only look at that advice and more or less file it and perhaps forget about it. In other words, it has no obligation or even power to act on that advice.

On the other hand, the minister, under clause 12, is authorized to amend, suspend, cancel or reinstate an export permit. So it would seem to me that it would be much more consistent if a copy of the advice of the examiner were sent to the minister rather than the Review Board, or perhaps have a copy sent to both of them—to the Review Board and the minister—so that the minister would be in a position to exercise his powers under clause 12.

Hon. Mr. Faulkner: I have thought about this matter since you first raised it with me, Senator Lamontagne. I am rather reluctant to see set up within the Department of the Secretary of State what would amount to a bureaucratic secretariat second-guessing these expert examiners.

I think we can meet your point, however, if the review board in fact gets a copy of the decision from the expert examiner concerned. The matter can then, on advice from the review board, be referred to me for action, and I can discuss it with the board.

Is there not some provision within the bill for this type of procedure, Mr. Clark?

Mr. Clark: Yes.

Hon. Mr. Faulkner: The assessment would take place at the review board where it should, in my judgement, and if the board feels there perhaps should be some action taken in a particular case, it can then refer the matter to me for my possible action.

I would prefer to have it done in that way, senator, rather than having someone in my office trying to second-guess the expert examiners. My intuition tells me that the incidence of dispute is likely to be very rare indeed.

Perhaps Mr. Clark has some thoughts on this as well.

Mr. Clark: I should like to put forward two points. First of all, at the level of object we are talking about, we do not want to be concerned with this level. We want to have confidence in the correct action being taken by the customs officials and the expert examiners. The whole philosophy of the act is concerned with objects above a certain level. There are decisions which will be made, and these people should be competent to make them.

The other point I should like to make is that the administrative services for the review board does not consist of setting up a new bureaucracy. The administrative services in respect of the review board will be supplied by the minister. So, in effect, you are doubling it by saying that the minister be informed. The minister will be informed in the sense that if the review board judges something to be wrong, it will inform him.

Senator Lamontagne: But by that time, it seems to me, the export permit will have been issued and the object will be out of the country. Even if the minister wants to retroactively cancel or amend the permit, it will be too late.

Mr. Clark: We want to put our emphasis on the really important objects. It depends on how tight you want to make the noose. We think that when there is evidence of fraud, or evidence of dishonest dealings, at the level we are interested in, we will know about it. At the level of objects which are not really contentious, we would rather not know about it. We want to keep the system moving as quickly as possible. The whole point is to have what bureaucracy we have carry out its activities with dispatch so as to cause minimum disruption in whatever the personal rights of the individual are. I think if we become concerned with objects that are below the level of our concern, we are just building a larger bureaucracy.

Senator Lamontagne: I am not as concerned in so far as subclause (2) is concerned, but under subclause (4), once the examiner has decided that the item in question is included in the control list, he must then apply these quite difficult and subjective tests. If the examiner's decision is to grant an export permit, there is no review in respect of that decision to determine whether or not there has been an error in judgment, whereas if the

examiner's decision is not to issue a permit, the review board, sitting with at least three members, has at least two months, and a maximum of four months, to review that judgment. It seems to me there is an inconsistency in this respect.

Hon. Mr. Faulkner: Would you not agree, Senator Lamontagne, that the incidence we are talking about would, first of all, be marginal? It is unlikely that there will be clear cases of something of that nature that fall squarely within the criteria we are talking about that the expert examiner allows to be exported. We are talking about a marginal error in judgment on the part of the expert examiners.

In all cases, the expert examiner will be the outstanding expert in this area in the region in which he is operating.

I would suspect, first of all, that the incidence of this happening would be relatively rare, but the review board, which will have notice of these things, will be in a position to detect this type of thing, and not only inform me, but make a judgment about the activity of the expert examiner in question.

Senator Lamontagne: But what happens if the board is not sitting at the time?

Hon. Mr. Faulkner: Given the amount of trade that is likely to be affected, as well as the incidence of this type of thing happening, it seems to me that it is likely to be sufficiently rare that further protection will really be at the expense of some form of efficiency in the operation. It would involve perhaps several people in my office in a monitoring process, as well as having people in place who are expert enough to make expert judgments about the failure of the expert examiners in the field.

I resisted your very reasonable persuasions on this largely because I feel, in looking at it in offset terms, I would not be accomplishing a great deal, but would be inheriting a fair amount of work. That is why I feel the protection we have with the review board monitoring the work of the expert examiners over a period of time is sufficient protection to prevent any serious loss at the margin, which is all we are talking about.

Senator Lamontagne: What you are saying, really, is that if there are to be errors of judgment on the part of the examiners, you want those errors to be in favour of the exporter rather than the public interest.

Hon. Mr. Faulkner: No, I do not think I would accept it in those terms.

Senator Bélisle: Mr. Chairman, my question is supplementary to Senator Lamontagne's. In reading through this bill, it is my impression that it is the intent of the government to have the last veto rest with the minister. For example, if an expert examiner uses a certain yardstick in arriving at a decision with respect to an object, and the review board, looking at the provincial view, uses a different yardstick in arriving at the decision, it is my understanding that the minister will have the final veto. Am I right in that?

Hon. Mr. Faulkner: No.

Senator Bélisle: The minister will not have the final say?

Hon. Mr. Faulkner: The final say will be that of the review board.

Senator Bélisle: In other words, if an export permit has been turned down by the review board, the minister has no further power with respect to that decision?

Hon. Mr. Faulkner: That is right.

Senator Bélisle: In other words, it is just the opposite of immigration.

Hon. Mr. Faulkner: This is even more difficult to make judgments about than immigration. We are really dealing with a highly specialized area. I think it would be difficult, if not presumptuous, for a minister of the Crown, even an enlightened Secretary of State like Senator Lamontagne, or some of his equally enlightened successors, whom I will not enumerate—

Senator Lamontagne: You don't want me to ask you any questions!

Hon. Mr. Faulkner: It would be difficult to sit in judgment in this very refined area after a group of the very best experts in Canada have made a decision. I have, out of natural modesty, decided to retire from the field as minister and set in place a formula that will work, drawing upon the very ablest talents we can have in the country. This question came up in committee discussions in the other place, and some felt, particularly from the New Democratic Party, that perhaps the minister should retain that ultimate sanction. I resisted it there, and I would like to resist it here, for the reasons I have just mentioned.

Senator Bélisle: May I say, Mr. Chairman, having travelled with the minister for 30 days in Africa, I know there is lots of modesty in what he has said, but I wish all the ministers would come to his conclusion.

Hon. Mr. Faulkner: I am afraid, honourable senators, I am going to have to leave. If you need me back tomorrow, I will be here.

The Chairman: I think Senator Bonnell has just one question.

Senator Bonnell: I wondered if the Review Board had any authority under this bill to review a permit, even though they have a copy of it, and advise the minister, unless somebody actually asked them to review it and somebody made an application. Section 18(2) says:

The Review Board may sit at such times and places in Canada as it considers necessary or desirable for the proper conduct of its business.

Its business is later on described as being where they get an application for review. Therefore, they cannot sit just because they have a review and advise the minister. They have no power.

Hon. Mr. Faulkner: The amount of work the Review Board will be doing has still to be determined by the extent of the trade we are involved in. This is somewhat unknown right now, how much will actually be caught in this proposed web. The Review Board will, as part

of its responsibilities, having a secretariat working with it, monitor the work of the expert examiners. As I said earlier, if we see a pattern of laxity, if I could so describe it, things being granted export permits which probably should more profitably have been judged as falling within the control list and so on, they will deal with. My guess is that this is not likely to happen, because we are dealing with people making judgments whom we have designated as experts in the field. There will be the monitoring of that work by the Review Board.

Senator Bonnell: Under what clause do they get that power to monitor?

Hon. Mr. Faulkner: They get it because the work of the expert examiner is referred to them. I think it is implicit.

Senator Bonnell: It just says a copy will be sent to them. It does not give them the power to do anything about it.

Hon. Mr. Faulkner: It is implicit, if not explicit. That is the purpose of getting the paper. If it needed to be spelled out it could be spelled out.

Senator Bonnell: It is just a matter of filing it away. It does not say they can do anything about it, unless somebody makes an application for an appeal. Under this bill there is no authority that gives them power to do anything about it.

Hon. Mr. Faulkner: The way I envisage it is that they would get a copy of what the export examiner was doing.

Senator Bonnell: And file it.

Hon. Mr. Faulkner: They would review it; the secretariat working with the board would review it. If they felt something was happening that should be stopped they would refer it to me and I would stop it. That is where my ministerial discretion comes into play.

Senator Bonnell: Where does it give them power to review it?

Senator Lamontagne: Clause 12, is it not?

Hon. Mr. Faulkner: That is my power. I think Senator Bonnell is asking where it is specifically spelled out that the Review Board should in fact review. It is not. It is implicit.

Senator Bonnell: The Review Board has no power to review.

Hon. Mr. Faulkner: It has the power of review. I think your complaint is that it is not spelled out as part of its duties that it should in fact review.

Senator Bonnell: Where does it even get the power to review? Under this bill I see no clause that says they have the power. The only thing they can do is to receive an application; they file it away and that is the last power they have unless somebody appeals. Then they can look at it and make a recommendation. Before that the minister has the power to do something if he wants to. That is the way I see the bill.

Hon. Mr. Faulkner: That is an interesting point. We may want to pursue that a little further. I had approached it rather differently, that they would get this paper as a matter of course, and the reason they would get the paper is to monitor what is going on in the field.

Senator Bonnell: It does not say that.

Hon. Mr. Faulkner: I was planning to deal with it as part of the administrative arrangements around the work assigned to the Review Board and the secretariat, which come through regulations and so on. If they felt at that point that something should happen, they would tell me about it and I would exercise my power under clause 12. That seemed to me to be sufficient.

Senator Bonnell: Is there provision in the bill that gives the Governor in Council power to make new sections to give them more power than the bill now gives them?

Hon. Mr. Faulkner: The power is the power I exercise under clause 12. The Review Board would have the power; it would simply have the administrative responsibility of reviewing these things because they get copies of them, and advising me if they feel I should act.

Senator Lamontagne: There is no delay period there.

Hon. Mr. Faulkner: That is right.

Senator Lamontagne: As I said before, the object might be out of the country by the time you receive warning from the Review Board.

Senator Bonnell: Under clause 12 I do not think the minister has power to tell the Review Board they have power to do something that is not in the bill. Under clause 12 the minister is given power to amend, suspend, cancel, or reinstate any export permit that was offered, but it does not tell the Review Board, "You look them all over and report to me the ones you think I should change." In my view, the Review Board has no right to do anything other than file that letter when it gets it. It cannot even sit, because in order to sit and review it has to have an appeal before it. In other words, it cannot sit to make a recommendation to the minister. Therefore, two or three years could be wasted.

Hon. Mr. Faulkner: It is an interesting point that we should reflect on. I would like to reflect on that. I am still not persuaded that the administrative arrangements I have proposed as a way of getting at this problem cannot be achieved under this bill. I would like to check that out.

Senator Bonnell: Under what clause?

Hon. Mr. Faulkner: They could be asked to do it under the regulations, if they want to give me advice on these things. They get a copy of the expert examiner's work. Implicit in that is the idea that they would look at it. If you feel that for purposes of review they should have that spelled out in statutory terms, I would like to reflect on it. It is an interesting point.

Senator Bonnell: I have my doubts if even the Governor in Council has the power to make regulations that are more or less denied the board in this bill. This bill says the board can only sit when something is referred to it as an appeal. In no way does it say there is a review list there. If the Governor in Council decides to make a regulation that they are supposed to do these things and the bill says they cannot sit until they have an appeal, then they cannot overrule Parliament.

Hon. Mr. Faulkner: There is nothing in this bill that prevents the Review Board being called together, or examining a copy of the export permit issued by the expert examiner. What you are saying, I take it, is that unless that review process is really spelled out in statutory terms no administrative arrangements could accomplish it. I think the point is sufficiently important that I would like to look at it. My intention was to accomplish this through administrative arrangements. However, I think it may be a fine enough point that we should check it out.

Senator Bonnell: As long as you think about it it will work out all right.

Hon. Mr. Faulkner: Would you excuse me now, Mr. Chairman?

Senator Lamontagne: You might have to go back to my original suggestion.

Hon. Mr. Faulkner: I am always prepared to do that.

Senator Bourget: What about the amendments, Mr. Chairman, before the minister leaves.

Hon. Mr. Faulkner: I think Senator Lamontagne has them. I referred to certain amendments that I have already indicated I am quite happy with. The other ones I would prefer to argue tomorrow morning, if they arise.

The Chairman: Thank you very much, Mr. Minister.

Hon. Mr. Faulkner: Thank you very much, Mr. Chairman and honourable senators.

The Chairman: Shall we carry on as we have been doing and then come back to the other witness later?

Senator Lamontagne: I would suggest, Mr. Chairman, that in order to follow procedure we should perhaps, if my colleagues agree, hear the other witness before we proceed further. We would then know which clauses we have adopted.

The Chairman: I agree that we might save time if we heard the other witness now. Is that agreed?

Hon. Senators: Agreed.

The Chairman: I would like to introduce Mr. H. A. Malcolmson, who is appearing on behalf of several individuals who are interested in this legislation. I understand you have a presentation to make to the committee, Mr. Malcolmson.

Mr. H. A. Malcolmson: Yes, I do, Mr. Chairman and members of the committee. My principal role in appearing before you is that of counsel or solicitor for an informal group of Toronto art collectors with whom I

have been associated over a period of years in relation to cultural export policy and the intentions of the government in that respect. Apart from that, it may be useful for me to mention that, although I am and have been in practice perhaps a dozen years, prior to that and in my first years of practice I had a dual capacity. That was the capacity of an art critic, being art critic and columnist for the lamented *Toronto Telegram*, the *Toronto Star* and, for a period, the CBC. I have been the beneficiary of Canada Council grants on occasions and have visited in my critical capacity, as a guest of the Council, various areas of the country. I am, as I mentioned, a solicitor. This has tended to bring me into contact with persons who collect art in substantial amount and substantial value and have major important collections in Canada.

I am familiar with the artists and happen to be involved and associated with the National Gallery of Canada and the Art Gallery of Ontario. I trust that the foregoing suggests that I do have some knowledge of the state of art in Canada from the institutional point of view, the legal point of view, the collecting point of view and that of the artists themselves. It is principally in those areas that I wish to speak to you and do what I may to provide the committee with some view as to how this bill is regarded by those persons who have not been consulted. That failure to consult, I am anxious to emphasize, I do not believe has been due to any lack of effort on the part of Mr. Clark, the department or the minister. It is simply that on occasion the act of consulting with some people is more difficult than consulting with others when consultation is desired in connection with legislation of this character—for instance, with provincial government and cultural institutions. There is always a party to answer the telephone. I should add that the professional art dealers form another such category and I know that they have been consulted by Mr. Clark and the minister. That is not a difficult process, it being necessary only to locate the president of a professional organization and consult with him.

Senator Lamontagne: I would like to know if you appear before us in your personal capacity, or on behalf of others. If you appear on behalf of others, who are they?

Mr. Malcolmson: I appear on behalf of other persons. My remarks as to my background are simply to amplify the comments I intend to make.

Senator Lamontagne: Could we be told who they are?

Mr. Malcolmson: Yes; since 1971 I have been in consultation with a group of Toronto collectors. One of the names is Dr. Murray Frum who, in Toronto, has a very well-known collection of African art. I have been in consultation and have a recent communication from Mrs. Ayala Zacks. She and her late husband were associated with the Art Gallery of Ontario and have made a major and marvellous bequest to that institution. I have been associated with and am directly instructed by Mr. Joseph Tannenbaum, who is a party, I believe, Mr. Chairman, to the remarks I have to make. He is a collector who in the past dozen years has collected an extraordinary group of nineteenth century French paintings, in the period after Delacroix and before the Impressionists, an area of art which had been neglected

by almost everyone. He had the foresight to collect in this area and has acquired in a short period an extremely important group of paintings, so important that Hilton Kramer of the *New York Times*, together with various American institutions and newspapers, write of it. Perhaps this is privileged information, but I know that national institutions of Canada are making special arrangements in relation to that collection, because they regard it as so important.

I suppose one of the points I wish to bring to your attention, gentlemen, in my representational capacity, is the position of Mr. Tannenbaum, who has acquired this distinguished and extraordinary collection in an area of which Canada did not previously possess anything. He says, rightly or wrongly, that he will cease collecting any work and that in his opinion persons of his character who would otherwise make acquisitions of that nature will be inhibited or discouraged by this legislation from making further acquisitions. I am sure you would like me to say why that is. It simply pertains to the fact that these gentlemen and many other collectors are extremely concerned by the inclusion in the Control List of work of non-Canadian origin, to which I believe the minister referred as foreign cultural property.

Senator Lamontagne: So, today you are presenting the views of these people, not necessarily your own?

Mr. Malcolmson: That is correct.

Senator Lamontagne: So we can take it that you are presenting the views of Mrs. Zacks? I know her very well and have great respect for her.

Mr. Malcolmson: I wish to be careful in saying that every word I say represents the view of every one of these persons and, because these are different persons, I can only offer a consensus of their comments to me. Obviously they will have different views, with different degrees of emphasis.

However, the consensus, put simply, is that one particular aspect of this legislation, the inclusion of work not of Canadian origin, may be harmful indeed for the collection of art and the welfare of art in Canada. I wish to emphasize at the same time that those I represent do not oppose this legislation, as such. It contains many positive virtues. The protection of indigenous Canadian art is a motive to which I have heard no objection in any way whatsoever. In fact, the regret has been that perhaps work of Canadian art is not better protected by the provisions of this bill than it is. This refers, obviously, to Eskimo art, for example, which is produced by living artists, less than 50 years old, and so forth, and is subject to free export. There is therefore no protection whatever for various forms of Canadian art which may be excluded from the limitations of the Control List. This may be necessary, as Mr. Clark knows better than I. It is felt that this lack of protection for certain types of Canadian art is unfortunate. In any event, in relation to the control of work of foreign origin, it is felt that the bill and its limitations will prevent the acquisition of African art, for example.

I am talking of the future and the reasons these persons tell me that it will discourage them from acquiring foreign art is that, rightly or wrongly, the collecting

of art is not philanthropy. When persons are acquiring works of art of a value of \$5,000, \$7,500, \$100,000 or \$200,000, they are aware of the investment character of that acquisition in addition to its aesthetic character, and their ability to dispose of it under a variety of circumstances is fortunately, or unfortunately, in their mind. I am advised by these persons that the imposition of a control procedure over their right to dispose of such objects represents a discounting factor on their investment. It will make it less valuable in terms of their lack of ability to freely sell that work. You can appreciate, I am sure, that if you are a Toronto collector or a Montreal collector—it does not matter where you are—and you are telephoned by a New York dealer wanting to buy your work but, at the same time, that dealer in New York has available an alternative purchase from someone in Cleveland, and the Toronto collector has to say that he has to go to the government to get approval before making the sale, then in view of the speed of the marketplace, the New York dealer is going to make an arrangement with Chicago or Cleveland or elsewhere and leave the Toronto person to the side. These are obvious market factors, and if the Canadian work is of an exceptional quality, then other factors may come into that. But I think we can generally concede that there will be some limitation on the flexibility of Canadian collectors in disposing of their work. If a major and material benefit to Canada is achieved in limiting that person's flexibility, then that is thoroughly justified, and in the view of the people I am representing, that limitation on Canadian work—work that flows from the indigenous Canadian culture—is entirely justified. But in relating to foreign cultural property, it is not. And a major reason that they say it is not, honourable senators, is this: I wonder to how great an extent it is appreciated that the quantity of foreign cultural property that would be in the control or in the hands of Canadian private collectors is extremely limited. The minister conceded that to some extent when he referred to the paucity in this area, and it is true. I do not know what evidence or facts I can give you, but the extent of collecting of significant work in this area in Canada is such that our great need, as a country, is to actively encourage the importation of important foreign cultural products in order to assess the work of Canadian artists. We need a context in which the work of New Guinea, Africa, Europe and Asia is available to the greatest extent possible, and the curatorial staffs assure me that when they wish to assemble an exhibition of Canadian collectors of work that is a little bit off the beaten track, it is extremely difficult. There are three Kandinskys in Canada and two works of importance of the 17th century. Here I am talking about work in private hands. So that we have a situation where our urgent national need is to encourage in every possible way the importation of important foreign cultural property, and I think it is most unfortunate that the effect of this bill will be to discourage persons who in the future—five years or ten years from now—might consider, and probably with a great deal of nervousness and anxiety, spending \$200,000 or \$300,000 on the purchase of a work of art.

I agree, honourable senators, that Mr. Clark has to recognize the difficulty and he with the minister have done what they could to attempt to define the limitations in the act so as to harm this object as little as possible

and so we have the rule dealing with 35 years, 50 years, and living artists. But my difficulty is that even after they are told very patiently and carefully that it is 50 years—and in fact I am starting to forget it myself—50 years and made by a living person, it is very easy to get the figures mixed up in your mind and transposed. As far as these questions are concerned, it is just a new government restriction. The people with whom I have discussed this are also concerned, rightly or wrongly, that once it is 50 years, then the government may reduce it to 35 or 25 years.

Senator Lamontagne: But the government will not do that. They cannot do it. They will have to come back to Parliament.

Mr. Malcolmson: I appreciate that. It is not susceptible to change by regulation. I have no reservations about your statement. My difficulty is that you are dealing with people who may not have the precise understanding that the gentlemen in this room have of exactly what the situation is, and we are dealing with how other persons will react in the future. So I suggest that prior to imposing a restriction that may in practice be a very limited benefit, we should gauge very carefully the inhibiting effect of that provision for the future.

I have one other area of representation that I am anxious to make, and that has to do with the question of consultation. Senator Lamontagne and the minister have emphasized in the formal remarks I have read, and the minister again this morning, that it is essential for this bill to work that there should be co-operation between the various bodies, and that the art community, as it were, should work together to make the principle and the philosophy of this legislation work. Under those circumstances, I would ask you to consider very carefully, in the first instance, the representation I make on behalf of collectors, but beyond that just to consider the consulting process.

The minister has stated, and I believe Senator Lamontagne did—in fact, I see in the opening paragraphs of his remarks in the Senate that there is a statement that as soon as the bill was introduced in the other place these groups, the custodial institutions, collectors and the trade, had an opportunity to consider it in detail and it had met with a remarkable degree of support from all quarters. I agree, and I believe that the provinces have been consulted, that the custodial institutions have been consulted and the Art Dealers' Association has been consulted, but I respectfully . . .

Senator Lamontagne: Later I mentioned some more associations.

Mr. Malcolmson: That may be the case, senator, but the underlining in my draft here is the word "collectors," and I am respectfully suggesting to you and to the committee that collectors have not been consulted. In fact, the precipitous way in which the bill has been brought forward has had the opposite effect, in my experience. The collectors feel that the bill is being brought forward with undue and unseemly haste, that they are having no opportunity to consider or assess the bill, and in this respect may I point out that I believe that the bill was introduced last fall in the House of Commons and, having received the appropriate reading, the Commons commit-

tee then considered it in February, and individuals in Toronto, other than myself, attempted to make this kind of representation to the Commons committee and were told, I think it was on a Friday, that they would have to come on a Tuesday and if they did not come on the Tuesday, then they, being a corporate collectors' group, and individuals including myself were simply not to be heard. I responded to the chairman of the committee and stated that, surely, the Commons committee did not intend to conclude its hearings on a matter of such importance to collectors without hearing them, and I was advised that that was exactly the case and that there was to be no hearing on the matter. Working with Senator Carter and with his great assistance, I have been able to come here this morning.

Senator Lamontagne: Mr. Chairman, I have to interject here. I have looked at the proceedings in the other place and I think that the committee in the other place was quite ready to hear you. You suggest today that they were not prepared to contemplate any hearings, but I think they were prepared to hear you, but that at that time you were not ready for them. You have just said that they were not prepared to contemplate any hearings, but I think that they were prepared to hear you and that at that time you were not ready.

Mr. Malcolmson: That is correct, sir. I have my correspondence here. I indicated to the chairman that, by virtue of the mail strike which was on at the time the committee was holding its hearings, I simply was not able to correspond with a diverse group and obtain their instructions, in the circumstances. I therefore requested that he give me a further period, when the mails had recommenced, so that I could meet with these people. The chairman advised that there were scheduling difficulties, and other problems that the committee had. I am talking, of course, about what has actually occurred, as opposed to anything else. Quite obviously, no one has any improper motives of any kind. However, it just was not possible for the committee to give me that opportunity.

There is, however, one central point that I want to indicate further. I realize Mr. Clark's difficulties, but my difficulty is that it is not easy to get the views of collectors. It is not like phoning someone close at hand to find them out.

In the course of Mr. Faulkner's remarks to the house, he said that he was considering having a conference convened across the country in various places to discuss the bill, though it is not in the bill. He said that he was considering convening a forum to deal with the various interests, institutions, trades, collectors, and so on, to discuss how the system was going to work.

Senator Bourget: Excuse me for interrupting, but what was the date when the minister made that statement?

Mr. Malcolmson: I am reading from the notes for a statement by the Secretary of State on second reading of Bill C-33 in the House of Commons on February 7, 1975. On page 12 of these notes, at the bottom, the minister speaks of his proposal to convene meetings throughout the country to discuss with various persons the effect of the bill.

What I would strongly and most urgently suggest is that that very desirable series of meetings across the country be held under circumstances where persons who attend the meetings could have some kind of dialogue with the minister as to what should go into the bill, so that there could be discussion with persons directly affected, as to whether, as I suggest, the inclusion of, say, non-indigenous art will harm art in Canada. That is a factual question. I do not purport to have the last word on it. It is a conclusion that I think the minister, or any other person, would come to after talking to collectors, assessing their motives and listening to the various objections that have been made in this area.

I cannot take your time today to mention all the people concerned, yet in discussion in various portions of Canada this can be forthcoming, though my efforts have been concentrated, obviously, in Toronto. I have heard from a gentleman I spoke to, namely, Mr. John MacAulay the distinguished Winnipeg lawyer, and one of our most important Canadian collectors and benefactors, who has strong reservations about the bill in this area, and who thinks it is a bad idea. Someone, you see, should ascertain whether other Canadians as distinguished as Mr. MacAulay share that view.

I would also like to mention, with due respect to Mr. Clark, that Mr. Clark wrote me at an early stage, mentioning the bill, and at the same time indicating in his remarks what the bill was to say. Perhaps I should be more specific. Mr. Clark wrote to me as early as February, 1974 indicating that legislation would be forthcoming.

Mr. Clark: I believe it was in fact 1972.

Mr. Malcolmson: Yes. This legislation has been coming, as it were, since the time of prior ministers, and I was first of all in touch with the department in 1971, which is four and a half years ago. I first met with my group and wrote to the Secretary of State's office in 1971. Between 1971 and, really, the fall of 1974, as far as outsiders are concerned, the matter was under consideration and something was going to happen or was not going to happen. I did hear from Mr. Clark in February of 1974, at which time he indicated that the matter would be, as it were, brought forward again, or was under more active consultation. Mr. Clark, however, properly advised me by letter of the provisions that would be in the bill when it became available, but he was not at liberty to indicate exactly what it would say except in general terms.

The difficulty I have had is that the bill was introduced in the fall, and frankly I never dreamed that five months later we would find ourselves with a bill practically passed.

Senator Lamontagne: You are not aware of the efficiency of our parliamentary institutions!

Mr. Malcolmson: I am aware of the fact that the government, when it comes to areas such as the competition bill, or the Corporations Act, or a variety of major legislation affecting the business community as a whole, have seen fit to introduce bills, have let a reasonably extended period of time go by, have re-introduced the bills on various occasions and, when a consensus has developed, the bills are finally enacted. I just cannot understand why

a similar process cannot occur in relation to this bill, why the minister cannot take steps to ascertain the views of collectors, and also to determine that difficult, somewhat subjective area of what will be the effect of the bill.

You see, the minister consults the institutions. In the bill the institutions are to receive substantial additional funds and great assistance to their collecting procedures. Of course, the institutions will have no objection. The art dealers have a provision whereby they may get a general permit, but collectors have been so unkind as to suggest ways in which there may be some benefit to the collectors in the framework of the bill. That is not something I want to go into now, but that is something which a private consultation might review. These are areas which I think just must be given adequate consideration by the collectors.

Senator Lamontagne: But the collectors have a lot to gain under this bill, too.

Mr. Malcolmson: The collectors have a great deal to gain. It is an excellent bill, and I commend to the greatest extent Mr. Clark and the minister for bringing it forward. The tax benefits are of major material benefit, and they will assist art in Canada; conversely, however, sir, with the tax benefit the collectors will now receive, the motivation for a collector's selling outside of Canada any art is greatly reduced. In fact, it is probably the case, with regard to the tax benefit, that a collector would have to sell his work outside Canada at some kind of premium to a Canadian price to stay even with the tax advantages.

Senator Lamontagne: How do you explain that?

Mr. Malcolmson: Well, if a person sells to an American he receives no tax benefit by virtue of that sale. If he offers the same work of art to a Canadian institution, and the review board makes the determination that it meets the test of the act, he will receive a tax benefit for the transaction. He will not have to pay capital gains tax.

Senator Lamontagne: So he has a great advantage in importing.

Mr. Malcolmson: He has a great advantage in keeping it in Canada, precisely. So that then leads me to ask, if the act has wisely and constructively set up machinery whereby a Canadian collector has all kinds of motivation to have his works stay in Canada, why we need to have this cloud of inclusion of this kind of work in the control list, with the consequent inhibiting effect that will have on people acquiring these works in the future. It simply goes to the question of whether, in taking this major step and including African and oceanic art in this bill, we are as a country obtaining any benefit from doing that. I am strongly suggesting that it is going to inhibit future collecting in those essential areas in Canada.

The Chairman: Does that conclude your statement?

Mr. Malcolmson: Yes.

The Chairman: Honourable senators, we have dealt with clauses 1 to 7, which we have stood. We were at clause 8 when we asked our witness to make his presentation. How do you wish to proceed now? Do you wish

to continue as you were before, or do you wish to ask general questions of Mr. Malcolmson first?...

I would like to ask Mr. Malcolmson a question. He listened in on the minister's presentation and he listened in on the discussion of clauses 1 to 8. Was there anything dealt with this morning that you want to comment on?

Mr. Malcolmson: No, Mr. Chairman. The comment is on more technical matters and my comments go to the philosophy and approach of the bill.

The Chairman: Do you want to ask some general questions?

Senator Lamontagne: Your main objection is with respect to foreign objects?

Mr. Malcolmson: That is the case.

Senator Lamontagne: Apart from that, you have no objection to the bill.

Mr. Malcolmson: I think that is true; yes, I do. There are some persons who feel that it is bureaucratic and who have various objections of that nature; but the consensus is that the legislation is going forward and we are going to have this act in, essentially, these terms. It is really too late, I think, to get into my kind of technicalities. So I would rather eliminate that, notwithstanding that some persons have objections. The thrust of the comments has to lie in the two areas I have identified: first, failure to consult, which I suggest is getting the whole thing off on the wrong foot with people whose co-operation is essential; and, secondly, the inclusion of foreign cultural property.

Senator Lamontagne: Do you know the Council for Business and the Arts?

Mr. Malcolmson: Yes, I do sir.

Senator Lamontagne: Do they represent any elements of collectors?

Mr. Malcolmson: Here is my difficulty. I believe I saw a statement that they have been consulted. In half an hour, if I were in Toronto, I would be having lunch with Mr. Arnold Edinborough, the president of that organization. When I spoke to him and made the same kind of comments I am making to you, sir, he was extraordinarily interested. He wants to write an article for the *Financial Post*—and he was—I do not want to prejudice his conclusion—certainly sympathetic to the point I am making. So I think we can reasonably anticipate that there is some prospect that next week or the week after that an article may appear in the *Financial Post*, which certainly at least is going to quote me as saying that no proper consultation has occurred. And I just think, as a person interested in art and who wants art to be encouraged, that this is undesirable, if it can be avoided on everyone's part.

Senator Lamontagne: Mr. Chairman, I would like to put a question at this stage to Mr. Clark, because he is involved in this and more or less has views on failure to consult.

Senator Bourget: That is an important question.

Mr. Clark: Mr. Chairman, if I may speak of personal consultations with Mr. Malcolmson, I think I have had three or four opportunities to inform him at various stages in the process of preparing this legislation. He was sent the first public announcement that the minister made and that goes back I think to 1972.

He states that an official could consult concerning government proposals that were before cabinet. We could not consult on the details of the bill until the bill was tabled, but we carried forward consultation at various stages in so far as we could in the public domain as we progressed. I think Mr. Malcolmson would admit that he was aware of the 35-year rule in that letter I wrote to you, Mr. Malcolmson, in which I offered perhaps to come and see you and explain matters in the bill. I never got an answer to that letter. When the bill was tabled, as I had promised to you I sent it to you on the date, October 30, when the bill was tabled. You had the bill from that time. I sent you the amendments as they appeared in committee. I do not think it is fair to say that I have treated you in any way differently from any of the others who were consulted, other collectors, dealers, associations, or the provinces. I would like to make that point clear.

In regard to collectors in general, obviously I was not in a position, or my department was not in a position, to negotiate with every collector. We consulted with a large number of them. As a result of our consultations, we were able to have amendments to the bill which reflected this consultation. I would point out to you the amendment to the Income Tax Act whereby an object which comes into the country—let us say the bill was in force tomorrow—would be technically eligible for tax relief if it was referred to the board and the board decided that this object—after 24 hours—has some association to Canada and meets the criteria under the act and there is an institution in Canada interested in obtaining it. That tax relief is available. I could give you examples that I picked out of the paper just the other day of the kind of thing we are talking about.

Here is a former Governor General's pistol set, which sold for \$65,000 at a London auction. Let us imagine that they had come into Canada. They belonged to Lord Jeffrey Amherst. They were made in Scotland. Let us imagine that some Canadian collector had them, that he had bought them at Sotheby's and brought them here. They would not be subject to control for 35 years. But during that 35 years, if a Canadian institution wished to purchase them and was negotiating with the owner, he would be eligible for that tax relief.

Is that not rather an encouragement to import the kind of quality objects that we are talking about because the owner is guaranteed, if it is of interest to an institution, he is going to get his money plus the tax relief. If it is not of interest to an institution he is at perfect liberty to export. He is going to be inconvenienced after the 35-year rule—and I would say that if you count back from 1975 you have a 40-year rule to start off, because between 1940 and 1945 not much was really coming into Canada.

So we—as the British, as the French, as the Japanese—have this provision for the acculturation of an object.

And if it is not of outstanding importance, when the person does want to export it he is going to get his permit. We are not expropriating, we are not preventing, we are causing a delay to allow institutions to take a crack at it. If the institutions are not interested in it, the export permit is granted.

The Chairman: Do you have anything to add, Mr. Malcolmson?

Mr. Malcolmson: I do not think there is any disagreement with Mr. Clark. He has been very helpful. But I think we would both agree that when Mr. Clark and I were communicating with one another under the most perfect arrangements, that is not the same thing as consulting fully with collectors. I do not represent all of them and I am in only one geographic area. Nor am I suggesting for a moment that this bill is not helpful for collecting in Canada. In many respects it is, and the amendment Mr. Clark mentions is most helpful.

The issue, however, is wider than whether it is good for collectors. The issue, I am suggesting is: Is the bill in its present form—not 80 per cent of it but in its present, polished, final form—the best bill?

Senator Lamontagne: It is not yet in its final form.

Mr. Malcolmson: It seems awfully close. In this area of consultation, the Art Gallery of Ontario is convening a conference to be held next month. Mr. Clark is invited. I am invited to appear on the panel, and institutions are invited. The people in charge of that, at the Art Gallery of Ontario, are saying to me, "Why is the bill being passed before we can at least have our conference and Mr. Clark could get the benefit of the comments being made at the conference?" They ask me—and perhaps I am mistaken—what public opportunity there has been for people in Toronto or Montreal who are interested, to come in a public way and discuss the merits of the bill. They could advertise through a gallery, say, where persons who do not have the benefit of the time, as I might, could consult, or have particular better connected collectors speak to me and appear here, and so on. That is a very sophisticated process. I am suggesting that there should be consultation in Toronto, through the means of this conference, which will be held in the latter part of May, and then across the country.

Mr. Clark: Mr. Chairman, could I make some clarification? First of all, I would like to go back to the mention of Mr. Bovey's name. I have on file a letter from him to the minister.

Mr. Malcolmson: I was speaking of Mr. Edinburgh, the president.

Mr. Clark: He may be, but Mr. Bovey wrote on behalf of that group to say that the bill had the committee's full approval. I would also like to add that the minister had a proposal, but he did not include it in this legislation. He did mention in his speech on second reading that, after the bill became operative, he wanted to convene the people who were affected so that there would be a monitoring mechanism and so that the interested parties could be brought together on perhaps a biennial basis to look into the whole heritage question. They could then see how the bill was working, what matters might need to

be discussed, and how the Review Board was conducting its activities. In other words, the consultation was not to take the form of a forum prior to the legislation's being passed, and it was not to be included in the bill. That was his intention once the structure was set up. Those were the two clarifications. So I can only say that we did carry out consultations with the collectors, the trade associations and the institutions.

Just to confine it to the area in which you are concerned, Mr. Malcolmson, although we have to look at it in terms of the whole country, we carried out considerable consultation in Toronto, because at the present time it is the headquarters of both the trade associations which are interested in the bill. We consulted also with members of the boards of the various institutions there and also with the collectors.

I am not suggesting we were able to consult with all collectors, but we consulted with what we considered was a sample to get the feel. Once the collectors understood, we felt that any antagonism to the bill began to recede because they saw the benefits. They saw the checks and balances.

There is a point you make which is important, and that is the public relations dimension of this bill. Once it is in effect, we will have a massive program to do. We will have to win co-operation. I say we can win it and that we have won it in terms of those I have consulted with.

You say there are some people who remain to be convinced, that they may be from Missouri. Well, we will just have to work on that. I would not like to leave the senators with the impression that all collectors take the attitude some have taken, and I say that you have to balance it against the needs we have for the kind of objective the minister mentioned in his introduction this morning. We do need to have some ability—the minimum; we have to have a time limit; but beyond that we must be able to consider that art or objects of cultural significance in Canada are not necessarily all made here.

The point we are trying to make is that whether we take in citizens who become Canadians or consider people who are born here, likewise we have to consider that objects, say, from Britain, or France or from the world at large, can have an important association with Canada. What is true of people will be the same for cultural property.

Senator Lamontagne: Mr. Chairman, can you tell me why Mr. Thompson chose not to appear this morning?

The Chairman: Mr. Hunter Thompson could not be here this morning, honourable senators, because he had engagements elsewhere. I had thought he was sending a brief, however.

Mr. Malcolmson: Mr. Chairman, Mr. Thompson represents a group of corporate collectors in Toronto. I have been in touch with them, and I can tell you that the difficulty has been that the meeting was scheduled for today. Senator Carter telephoned Mr. Thompson, I believe, as he telephoned me, and he advised us that today was the only day available. When I found that out last Thursday, I believe it was, it was only after considerable rescheduling and difficulty that I was able to manage to be here. I had proposed to bring with me a collector, so

that you would have the personal, direct flavour of the problems collectors experience, but today was a bad day for that gentleman. I take it that the chance of his appearing and Mr. Thompson's appearing before you after today is remote indeed. Not to put it too harshly, it would seem that this is the last chance those gentlemen would have to give any input on this important measure. All four of us attempted to appear before the Commons committee, rightly or wrongly, but without success.

It is our feeling with respect to the whole area of consultation, then, that we are chasing a bill which is moving through like a locomotive. I do not know how many bills would be introduced in the fall to become legislation the following March.

Senator Lamontagne: Mr. Malcolmson, just dealing with your main grievance about foreign objects being covered by this legislation, would you agree, concerning collectors who are really dealers at the international level, that most of their deals would not be covered by this legislation because, if they were interested in exchanges at the international level, they would not keep most of their objects in Canada for 35 years?

Mr. Malcolmson: Well, sir, their work is unlikely to be affected in the first instance.

Senator Lamontagne: Take the case of Mr. Tannenbaum.

Mr. Malcolmson: Speaking of 1975, the effect on collectors dealing with the art they own today and the art they are going to sell this year and next year, it is limited indeed because of the various aspects of the act. I do not think anyone is going to rush out and sell some work before the bill becomes law—or before it became law, if it became law in the fall or next spring instead of the spring of 1975.

Someone made the point to me that the change in the rules in relation to the English and French legislation, particularly the English legislation . . .

Mr. Clark: It is not legislation.

Mr. Malcolmson: Sorry. Whatever procedure is applicable. It was pointed out that cultural export legislation of this character is, in the North American experience, very unusual. Canada and the United States is one primary art market. Art flows across the border because there are specialists in art. It is only in the larger urban centres. I am talking about the work of large international character. So North America is one market. Obviously, the Americans are not considering any legislation of this type. I would be surprised if they passed anything of this character. The motivation for this kind of cultural-protection legislation in Europe has come from the fact that those countries have built up, either as indigenous art or by acquiring other people's art, collections of enormous importance. By virtue of their economic situation England and France are switching to a situation where the money is flowing from North America to Europe. There is a tendency for their treasures to be sold off. It is pointed out to me that there is no sign of that occurring here whatever: first, because we in North America tend to have the greater funds; second, because there are just not the

number of works, not remotely the number of works, which would fall into this category in Canada. We do not have the stock to sell quite apart from the fact that we are tending to import rather than export.

It has also been pointed out that even in England, with the genuine strong needs there, the rules, which I believe here have been transposed as 50 years and 35 years, are 100 years and 50 years. If a work has been in England less than 100 years . . .

Mr. Clark: If it has been in England for at least 50 years.

Mr. Malcolmson: As opposed to 35 years?

Mr. Clark: As opposed to 35. The Titian, which any of you who were in London in the last few years may remember was purchased at auction by Mr. J. Paul Getty—Titian's "Death of Acteon". Titian was not an English painter. The English felt that this painting had been in the country and fulfilled their 50-year rule. The equivalent of our Review Board, which in England is called the "Reviewing Committee", decided the Titian was a national treasure. Institutions were allowed to bid for it. There was a general collection all over England to get money to meet the price of auction. The price was met and the Titian is now in the National Gallery in London. That is an example, in the British context, of a national treasure.

The minister mentioned the Greuze, a painting in the Van Horne collection, which we were able to repatriate on the same basis as the Titian which was in England for 50 years. The Greuze had been in Canada for a period of time which, if the 35-year rule were now in force, would mean it would fall under the Review Board's purview in the event of an appeal. At the particular auction when the Greuze was sold in London, there was a Goya, a Ruisdael, and a Romney. All four of those paintings happened to be from one major Canadian collection. Had the situation been different, with this bill in effect, Canadian institutions would have had a crack at those paintings, in the event that they were going to be exported and they met the criteria all along the line. I am just using that as an example.

Senator Lamontagne: I would like to go back to my original question, sir, and ask if you agree with me that, with this 35-year rule, most of the transactions in which collectors are interested would be exempt from this legislation.

Mr. Malcolmson: In the present and immediate future, yes.

Senator Lamontagne: The ordinary collector, in dealing with . . .

Mr. Malcolmson: My difficulty is that I strongly suspect that the ordinary collectors, even those who become reasonably sophisticated, will not be clear in their minds what are the limitations and rules. All they will know is that you have to get some kind of permit to sell your art from Canada, and then someone will say conversationally "Oh, I am sure that only applies to Eskimo art and Canadian works;" and some expert in the group will say, "Oh no it doesn't; it applies to works you buy

in the United States." People will say, "Gee, I didn't know that," and there will be confusion in their minds.

Perhaps it is unfair to suggest that people do not know the law better than they do, but I am very concerned that, before we apply this complicated piece of legislation and the bureaucratic machinery to an area, we be convinced that we are getting genuine protection, and help art in Canada.

I hope you appreciate the point Mr. Clark makes about tax benefits, and the funds available to institutions, which through the fund will make it easier to repatriate Canadian art both in and outside Canada. To my point of view, whatever need there may have been to cover foreign cultural property is substantially eliminated by the improved position Canadian institutions are put in by virtue of the tax aspects of this bill.

If we leave the tax benefits and simply take foreign cultural property off the list, we end up with an ideal situation. Nothing will be lost practically, but you remove the cloud over the possibility of people inquiring in the future.

Senator McGrand: I understood you to say that North America—Canada and the United States—was one market.

Mr. Malcolmson: Yes, sir.

Senator McGrand: You also said there is no evident desire on the part of the United States to interfere with this exchange of cultural products across the border. There is also no desire or action in the United States with respect to the takeover by Canadians of American industry.

Do you see any connection between the actions of Canadians who want to preserve Canadian industry—the talk about buying Canada back from the Americans—and this legislation which is aimed at protecting the takeover of Canadian art objects?

Mr. Malcolmson: I do, senator. In the bill, with which I do not quarrel, there is machinery to protect Canadian art. With that, I unequivocally agree. However, I should like to go beyond that and encourage Canadians to acquire the art of other countries. Taking the point back to your business analogy, senator, what I am suggesting is that Canadians should be assisted in acquiring the work of Americans, Europeans, and others. The amendment I am suggesting, which is simply the deletion of this one clause, would continue the preservation of Canadian works of art and encourage Canadians to acquire the art of other nations.

Senator Lamontagne: If I were a businessman, I would be more encouraged by this legislation to acquire foreign objects of art than I would be in the present situation. I would be guaranteed under this bill that I would be able to export that object, if I so desired, or sell it in Canada at a fair price and be exempt from the capital gains tax. There is some financial incentive.

You said previously that these people are not only in this business because of their love of art, but to make money. In my view, this bill provides a wonderful opportunity for them to make money.

Mr. Malcolmson: I may not be making myself clear, senator. I am not opposed in any way to any of the

benefits contained in the bill. If my suggestion were carried forward—that is, if foreign cultural property were removed from the control list—none of the benefits to the collectors would be removed by virtue of that amendment. It is not necessary that a work be on the control list for the tax benefit to accrue, but that it be purchased by a Canadian institution.

Senator Lamontagne: They would be quite agreeable, in your opinion, to get public funds out of the sale, but have no control.

Mr. Malcolmson: That is correct.

Senator Lamontagne: That is a line of reasoning which I cannot accept.

Mr. Clark: If I may offer an explanation, Mr. Chairman, this legislation, in terms of the additional tax relief, has to be looked at as a package. As the minister said this morning, the purpose of this legislation was to balance the maximum of incentives against the minimum of restrictive measures. If you look at the bill, you will see that the tax relief was obtainable because we had the 35 year rule in the sense that it is a package deal that you are looking at. It is our philosophy that you cannot select one of the elements of interest without balancing the interests of 16 custodial institutions, the trade as well as the collector.

What you are saying, essentially, is that you want a bill which is absolutely ideal from the point of view of collectors, whereas we have inserted the 35-year rule because we want to afford the custodial interest an opportunity to purchase it.

As the minister tried to explain earlier, each of the sides at interest have something that they like in the bill and something that they, perhaps, like less, but they are willing to cooperate in the interest of the public good. It is the institutions, which are for all Canadians, to which the objects will go in the event that they go through the process, having the collector happy with his money.

We could not draft this bill with one element in mind. We had to look at all of the elements affected and, in a rather delicate way, try to give each element something as we took something away, and we took away the right of an individual to act immediately. The export permit in respect of the object under consideration will be issued forthwith under this 35 year rule, and it has to meet highest standards to get into the appeal procedure.

Senator McGrand: I did not get a chance to finish the question I asked earlier. There are many people who feel the decline of money; they hesitate to put money into bonds, stocks and things like that, but they will invest in what they think will maintain its value. One of those is art and antiques. This seems to be a method a great many people are using for their investment. Do you think this legislation would in future be detrimental to that type of investment?

Mr. Malcolmson: Yes, sir, precisely.

Senator Lamontagne: In what way?

Mr. Malcolmson: Because a person who is, as the senator points out, considering buying of an investment char-

acter, putting money into, in this case, fine art instead of stocks and bonds, or perhaps fine art instead of some other commodity which is not covered, or will not be covered under some other legislation, he will ascertain whether there is any restriction on his right to re-sell, particularly of a government character. Investors are watching for that these days and, right or wrong, if such a man is told, as he will be, "Stay away from the art market in Canada because they have got some kind of government thing on it" by somebody who will not know what the government thing is, he will make that investment elsewhere.

I realize it will be said, "That is too bad. That is a cynical motive. We do not need it." However, bear in mind that if that person buys that work of art and brings it to his home, which is one of the benefits of it—instead of putting gold in the bank he gets the pleasure of seeing it and prestige in the community—that work finds its way into the public at large, it comes to be exhibited in institutions where collections are exhibited; it becomes known to university scholars in the area; it becomes one more work added to the very few outstanding works we have in Canada.

I really want to resist a kind of situation where I am here trying to grab more for collectors. I do not think that is the issue. I am suggesting the effect will be, not that anyone will sell something. The effect will simply be that in the future persons who might buy art will move to other areas where there is no restriction, and the loss under those circumstances is not to that collector particularly, because he has bought something else. The loss is to the entire community—myself and all of us, all the people who go to institutions. It is not a question of trading off interest I think it is a question of working out what is in the best total interest of art in Canada.

Senator Lamontagne: I cannot understand the witness's reasoning. He agrees that if this bill is passed the investor in art will make more money out of it. On the other hand, he says that these people will stay away from that market because they will not know the legislation. It seems to me that if they are rational people, as they are, and well informed, they will very quickly know the provisions of this legislation.

Mr. Malcolmson: Let us be clear on that. It is not as simple as that. A person who buys a work of art may be aware of the function of the bill; he may even be aware that when he sells he may be able to fall back on the bill and get some benefit. What he wants to know primarily is that he will be able to sell it freely when he wants to, when the opportunity arises. He does not know when he is acquiring the work whether it will be determined by the agency to meet these particular tests, and only under those circumstances will he have the tax advantage. It falls into a series of questions. He will not know how it is being judged. The tests are also objective.

In my opinion, it is very difficult to give a person, who is thinking of buying a work, an absolute assurance that the review body will make a positive determination at some date 15, 20 or 30 years in the future. How can that person know that? When he makes his decision today all he knows is that if he wishes to sell the work

at some time in the future he will not be able to compete with other sellers in other parts of the world on a free basis.

Senator Lamontagne: I do not agree with it, but we will let it go.

The Chairman: Are there further questions? Do you have representations with respect to other clauses, or are these your two main areas?

Mr. Malcolmson: These are the two main areas. However, if I could make one final comment, I hesitate to be drawn into a discussion as though my particular comments are exhaustive in any way of the comments which collectors as a whole might make with respect to this legislation. I know there is a tendency to deal only with the points which are made and the manner in which I put them forward is, I think, most unfortunate. Therefore my final request would be to urge the committee, Mr. Clark and the Secretary of State to consider my comments in the area of consultation so that not only will justice be done, but it will be seen to have been done with some degree of public consultation. I am sure that the bill will appear in an appropriate form, but such consultation might prevent it getting off on the wrong foot with the art community, particularly collectors in Canada.

The Chairman: Thank you very much.

I was speaking with Mr. Hunter Thompson, who desired to appear before the committee this morning, but found that his previous engagements prevented him from doing so. He planned to have his associate, Mr. Ball, appear in his stead, but he also was unable to attend. During our conversation, Mr. Thompson gave me to understand that he would send a written representation with you.

Mr. Malcolmson: I am sorry, sir. I may have something. I know that Mr. Thompson sent me a copy of a letter which he had written to Mr. Gordon Fairweather, M.P. I believe that the points outlined in this letter are those to which he wishes to draw your attention. I understand that he spoke with members of the Conservative caucus who had undertaken to delay third reading until some type of consultation had taken place. However, due to inadvertence or mistake, that was not arranged either. All I can do is leave his letter with you. It is addressed to Mr. Fairweather, signed by Mr. Thompson, and contains his comments with respect to the legislation.

The Chairman: That was not my understanding of the arrangement. I understood he was addressing a letter to the committee containing his representations.

Do the members of the committee wish to have this letter included in the record?

Senator Bonnell: Do you have Mr. Thompson's permission?

Mr. Malcolmson: I do have Mr. Thompson's authorization, I am sure, to have this letter introduced into your record.

Senator Bonnell: I would not like to have it included in our record without Mr. Thompson's permission, in

view of the fact that it is addressed to a member of Parliament and it might be beyond our duty or responsibility to take that into evidence.

Senator Lamontagne: If it were included in the record it might be unfair to the members of the committee and Mr. Thompson, as we would not be able to pose questions with respect to his points.

The Chairman: Shall we leave this in abeyance and decide its disposition later?

Senator Lamontagne: Since we will not be concluding today, do you know if we can attend tomorrow?

Mr. Malcolmson: I can ascertain that and advise you, Mr. Chairman. I will be happy to do so. Thank you very much.

The Chairman: Thank you very much, Mr. Malcolmson.

We were discussing clause 8. Is it the wish of the committee to proceed with the subsequent clauses? Are there further questions with respect to clause 8?

Senator Lamontagne: I have a question, Mr. Chairman, with respect to the test described in subclause (3) of clause 8. If I read it and understand it well, this would mean that an export permit could be issued under this legislation even if the loss of that object would significantly diminish the national heritage because it would not meet with the first test.

Mr. Clark: Well, senator, to reply to that may I look at the test with you? The first test is (a) in which we divide it into three kinds, the historical dimension, the aesthetic dimension or its value in the study of arts and sciences, to cover the waterfront, and what kind of importance or outstanding significance the object has. Then you stand back—that is if you have said yes to one of these—and you see, looking at (b) whether the object is of such a degree of national importance that its loss to Canada would significantly diminish the national heritage. So, in a sense you look at the object closely and you make this judgment having placed it in one of those three categories, and maybe in all of them or maybe in only two of them, but it must meet with one of them, and then you stand back and bring in the national dimension. Because here again I am reminding everybody that we are talking of an object that is of national significance.

Senator Lamontagne: So in short the answer is that an export permit would be issued?

Mr. Clark: If it does not meet the test of national importance.

The Chairman: Are there any further questions on clause 8? Shall clause 8 stand?

Hon. Senators: Stand.

The Chairman: Shall clause 9 stand?

Hon. Senators: Stand.

The Chairman: Shall clause 10 stand?

Hon. Senators: Stand.

The Chairman: Shall clause 11 stand?

Hon. Senators: Stand.

The Chairman: Clause 12? Are there any questions on clause 12?

Senator Lamontagne: This clause deals with the power of the minister to amend, suspend and cancel an export permit, except an export permit which has been issued under the direction of the Review Board. I may have another amendment to present later on, which has not yet been accepted by the minister, which deals, really, with a point which was raised by my colleague this morning. The minister said he would reflect on it, but in case the minister is in a position to use these powers here, which are broad, there is no appeal provided from the decision of the minister, and irrespective of the way in which the minister will exercise these powers—and this is something we will have to deal with, presumably, later on—I would suggest that there should be an amendment to this clause, by adding, after the word “board”, in line 41, right at the end of the clause, the words:

in which case he shall forthwith send a written notice to that effect to the applicant.

This would allow an applicant to go before the Review Board and have the decision of the minister reviewed. I understand that the minister is agreeable to this amendment, and that is my proposal.

The Chairman: You are moving this amendment?

Senator Lamontagne: I am moving this amendment to clause 12.

The Chairman: Would you repeat the amendment?

Senator Lamontagne: This would appear after the word “board” at the end of clause 12:

in which case he shall forthwith send a written notice to that effect to the applicant.

That is clause 12, line 41.

The Chairman: Is there any discussion on that amendment?

Senator Bonnell: How will the clause read now?

Senator Lamontagne: The clause will read exactly as it does at present plus, in the case of the minister suspending or amending a permit, the following words:

in which case he shall forthwith send a written notice to that effect to the applicant.

Senator Bonnell: But that does not give the applicant the right of appeal.

Senator Lamontagne: But we will have a consequential amendment in clause 23.

Senator Bourget: That would give the applicant the right of appeal.

Mr. Clark: That is right.

Senator Bonnell: Would you think the word “approve” should be put in, so that the effect will be that the minister may approve, amend, suspend, cancel or reinstate?

Senator Lamontagne: Well, this would change the procedure completely, if we were to say “approve”.

Senator Bonnell: If they turned something down he could overrule them.

Senator Lamontagne: Yes. If the examiner has given a notice to the customs officer to issue a permit, then the minister is empowered by this clause not to approve the permit but to amend, change or suspend it, and we want this decision of the minister to be the subject of an appeal before the review board. My amendment at this stage would partly accomplish that.

Senator Bonnell: There is another amendment coming later on?

Senator Lamontagne: Yes.

The Chairman: All agreed?

Hon. Senators: Agreed.

The Chairman: Clause 13. Shall clause 13 stand?

Hon. Senators: Agreed.

The Chairman: Clause 14—general permits. Any questions?

Senator Bourget: Mr. Chairman, on general permits, is this a kind of permanent permit to export?

Mr. Clark: No, sir. The minister gives this to a dealer who is, let us say, in the international kind of trade, and who is bringing material into the country to export it. He would apply for this kind of permit. On his understanding to play the game and meet with the regulations he would obtain it; but that permit can be taken away if it is abused. It is in effect, as long as the regulations will permit it to be in effect; then the minister can decide to withdraw that privilege if he wishes to, as I said.

Senator Bourget: Thank you.

The Chairman: Are there any further questions on clause 14? Shall clause 14 stand?

Hon. Senators: Agreed.

Senator Lamontagne: Mr. Chairman, could we stop there, because I have another perhaps little more complicated amendment?

The Chairman: You mean, stop our proceedings at this point?

Senator Lamontagne: Yes.

The Chairman: Is it agreed?

Hon. Senators: Agreed.

The committee continued *in camera*.

The committee resumed at 3.30 p.m.

The Chairman: Honourable senators, we resume consideration of Bill C-33, beginning with clause 15—review board.

Senator Bonnell: Mr. Chairman, I have a question first in regard to clause 8(3)(b), the loss of objects that "would significantly diminish the national heritage." That sounds very good and anyone could stand behind it,

but I would like to know what that phrase means. By its description it seems that it could be interpreted very broadly and very loosely. There is no definition in the bill. Much would depend on who reads this, who the person is and how they would interpret that phrase, as to what "national heritage" means. Perhaps that should be defined under clause 2.

Mr. Clark: I will give you our thinking, as to how we brought in this sort of rule. We took it as a variation of the Waverley rules. We have adopted or have been inspired by the Waverley rules used under the British system. We have included the idea of the "national heritage" in 3(b) as opposed to "outstanding significance" in 3(a)—three categories. They are all subjective. We do not dispute that they are. We are trying to put together two words "national" and "heritage" talking about "heritage" in terms of "moveable cultural property." The expert examiner—or, later on, after an appeal, the review board—would stand back and examine the object and really reinforce their critical judgment to make sure that, before creating a delay period, this is at that kind of level that it is not only outstanding but it is really going to be a loss to the country. When you say "define the national heritage", well, the national heritage, in terms of this bill, is the control list, upon which the first selection is made, so the object is on the control list. That is what is meant in terms of the heritage in relation to the country's heritage in moveable cultural property. It might be a document, it might be a painting. It is a subjective judgment. We recognize that these are subjective tools, but with the expert examiner coming from the kind of institution which has the responsibility of curating our national heritage in moveable property—whether it is an archives or a library of a museum or an art gallery, that is the kind of institution which will be sending its curator to make that judgment and that is their responsibility, to curate our national heritage.

Senator Bonnell: Let us suppose that we know what the national heritage is, and let us suppose that we know that it diminishes the national heritage if it is sold, but then it has to diminish it "significantly."

Mr. Clark: It is "significantly" because it is to remind them of this at all stages. We heard a witness this morning, disturbed by the problems posed by the collector in terms of the bill. What we are trying to say is that if the state is moving into this area we are doing it at very high level. We do not want to disturb people for objects below a certain level of quality. We do not want to have to interfere with his rights to dispose of the things. So this bill does have this public relations dimension, to remind all the people involved, whether it is the customs officer, the expert examiner, the review board, the people who read the act. We say that we are doing this at a top level of material. We are coming into this at the level of object which really will be significantly obvious, that the loss of it will deprive the Canadian people of a chance to have it in their institutions and this process will allow the institutions to have a look at it during the delay period having made that judgment.

Senator Bourget: Do you think that a decision like this, one of some importance, should be left only to the expert examiner or be referred instead to the review board?

Mr. Clark: That is why, when the expert examiner makes that first judgment, that first selection, but when he denies that permit then the individual has that 30-day period to make an appeal. We want him to make that appeal. Then the review board repeat the test. The expert examiners have already made the basic selection. The review board sits down to examine the object with exactly the same test and either accept the appeal or deny it.

Senator Lamontagne: Mr. Chairman, I promise not to insist on this amendment, but I think you are quite wise in not relying on the judgment of the examiner when he refuses or gives advice to the customs officer to refuse a permit. I think that if you are really consistent you would not rely on his judgment also when he gives an advice to issue a permit.

Senator Bourget: Touché.

Senator Smith: There is a point which may have been made before, but I am sorry I could not be here this morning. Have any of the provinces legislation to deal with these questions of archaeology, Indian artifacts?

Mr. Clark: Most of them have. If you ask whether Prince Edward Island has or not, I am not quite sure.

Senator Inman: They have.

Mr. Clark: Nova Scotia does, Newfoundland does, British Columbia does, Alberta, Saskatchewan and Ontario do. I am thinking of the people whom we consulted. If I have answered the question, I do not want to take up your time.

Senator Smith: That is a good answer. Am I to understand that the kind of legislation they have, for example, in Alberta, is very similar to this?

Mr. Clark: It complements it.

Senator Smith: I understand that, but in the approach they make, do they have an expert examiner who does this preliminary work and then goes to the review board?

Mr. Clark: No, sir. The legislation in the provinces, with some exceptions, is basically to preserve the cultural heritage in the ground. We are talking about archaeology, the preservation of a site, because the scientific interest is not the object once it is out of the square where it has been dug. It is *in situ* that the scientist wants to analyze that material. So they have regulations concerning the protection of historic sites or Indian burial grounds. They have no way of protecting the material that comes out of that site and is taken over the border. So we fit into it, because the expert examiner whom we will be using in Saskatchewan, say, will no doubt be the provincial archaeologist, and he will be the person who is able to go back to his provincial authorities when there has been some funny business and also bring his judgment to bear on the value of the objects in terms of export.

The Chairman: Shall we go now to clause 15?

Senator Lamontagne: I have an amendment which is rather complicated, which deals with clause 15(2). I

might as well start to read it first, because there are all kinds of new words inserted. I want to say that the minister has agreed to this amendment.

Mr. Clark: He welcomes it, sir.

Senator Lamontagne: That was after some discussion. I will read it first and ask my colleagues to look at this section while I am reading it, and then I will explain it, if you so wish.

Clause 15(2) would read:

The members of the Review Board, other than the Chairman and two other members who shall be chosen generally from among residents of Canada shall be chosen in equal numbers

(a) from among residents of Canada who are or have been officers, members or employees of art galleries, museums, archives, libraries or other similar institutions in Canada; and

(b) from among residents of Canada who are or have been dealers in or collectors of art, antiques or other objects that form part of the national heritage.

The Chairman: Is that the full amendment?

Senator Lamontagne: Yes. It would really involve the rewriting of subclause (2). The purpose of the amendment is to give more freedom to the minister in choosing from among people who would be qualified to be members of the review board. As it stands at present, only the chairman would be a so-called independent member of the board. I would like to add two other members, in addition to the chairman, who might be selected from among university professors who have no association with a gallery, or from among art dealers or art critics who have no such association. It would enable the minister to appoint at least two of those, in addition to the chairman.

When we turn to the other two categories of (a) and (b), as you can see from the wording of the bill, it is limited to employees of art galleries or to art dealers or collectors. Thus, another purpose of my amendment would be to enable the minister, if he wishes, to appoint a person who had at one time been associated with an art gallery but who is now retired. Such a person would have ample time to devote to the work of the board and at the same time would be highly qualified. Under the present wording of the bill, such people would not be eligible.

Senator Fournier (de Lanaudière): Would these people be hired permanently or temporarily?

Senator Lamontagne: As it is drafted, the bill enables the minister to make either permanent or temporary appointments. The minister has been given this freedom because at the moment there is no way of appreciating how much work will be involved in respect of the review board. If the minister finds that there is more work than had been anticipated, presumably he will make permanent appointments, but for the beginning at least the appointments will be on a part-time basis only.

The Chairman: Mr. Clark, do you have any comments to make?

Mr. Clark: No, sir. I am in entire agreement with what Senator Lamontagne has said.

Senator Bonnell: Mr. Chairman, is there something in the bill which says that the appointments are not permanent? Because it says nothing in the bill about how these people will be replaced. Other than for the chairman, there would seem to be no replacement procedure available.

Senator Lamontagne: When there is actually no term specified in a bill, it means that the appointments are during pleasure.

Senator Bonnell: In other words, the appointments would be for one year or for six months, or something in that order?

Mr. Clark: It would be at the discretion of the Governor in Council in making the appointments, sir.

Senator Bonnell: Mr. Chairman, there would seem to be the possibility of a conflict of interest under clause 15(2)(b). Apparently it is possible that the very person who has his application turned down because he is a dealer could be sitting on the review board judging his own case.

Mr. Clark: You mean, as an individual?

Senator Bonnell: Yes. Suppose a dealer did not get a permit and he appealed. He could be one of the members of the review board dealing with that appeal.

Mr. Clark: In that case the normal practice would be not to participate, if he was personally involved. The whole point of the review board is to have a voice from both sides in order to protect the interests of both sides and the rights of the person trying to dispose of the object. The idea is that between the two sides you are able to arrive at something that is fair.

Senator Bonnell: I can see the principle, but I cannot see an individual walking out in that situation just because he sees the possibility of a conflict.

Mr. Clark: That would be the internal rules as set up by the review board.

Senator Lamontagne: The purpose of my amendment would be to give more freedom to the minister under that clause, because we have added the words "who are dealers or who have been". The minister might then choose people who have been dealers or collectors and who would not be in the same position of potential conflict of interest that you are suggesting.

Mr. Clark: And yet would have the same kind of professional background.

Senator Lamontagne: Yes. They would have the same quality of expertise.

The Chairman: Shall the amendment proposed by Senator Lamontagne to clause 15 carry?

Hon. Senators: Carried.

The Chairman: Before I ask if clause 15 shall carry, shall clauses 1 to 14 stand?

Hon. Senators: Agreed.

The Chairman: Shall clause 15, as amended, carry?

Hon. Senators: Carried.

The Chairman: Shall clause 16 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 17 carry?

Senator Lamontagne: I think we should stand clause 17, in that it relates to the problem mentioned by Senator Bonnell this morning.

The Chairman: Shall clause 17 stand?

Hon. Senators: Agreed.

The Chairman: Shall clause 18 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 19 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 20 carry?

Mr. Clark: Mr. Chairman, I would draw your attention to the fact that the administrative services shall be provided to the Review Board by the minister. It is not a separate administration. The administration to the Review Board is being provided by the minister. That is how the Review Board ties in with the minister in acting on information which is not specifically stated to be within their duties. I just wanted to show you the tie-in with the department.

The Chairman: Honourable senators, shall clause 20 carry?

Hon. Senators: Carried.

The Chairman: Clause 21—rules and procedure. Shall clause 21 carry?

Hon. Senators: Carried.

The Chairman: Clause 22. Shall clause 22 carry?

Hon. Senators: Carried.

The Chairman: Clause 23—review of applications for export permits.

Senator Lamontagne: On clause 23, subclause (1), Mr. Chairman, I have an amendment which results from the amendment which was accepted this morning with respect to clause 12. We amended clause 12 so that the decision of the minister to amend, suspend, or cancel an export permit, should be the subject of a notice to the applicant.

Under clause 23 the applicant is empowered to make a request to the board to review the refusal. To be logical and consistent, I think that now we have to amend clause 23 so as to enable the applicant to ask the board to review the decision of the minister under clause 12.

Senator Bonnell: So we have that under clauses 10 and 12 now.

Mr. Clark: We have the wording, Senator Lamontagne. I have it here.

Senator Lamontagne: Yes. This is a very small amendment.

Mr. Clark: "or a notice under section 12" is what you want to put in.

Senator Lamontagne: Yes. After, "under section 10," add, "or a notice under section 12".

Senator Bonnell: "and/or".

The Chairman: On line 23?

Senator Lamontagne: No. Line 19.

The Chairman: And the amendment is? "or a notice under section 12"?

Senator Lamontagne: And then, further down in the same paragraph, at line 21, to delete the words, "of refusal", because the notice of refusal refers specifically to the notice given by the examiner, so we want to give a larger meaning to the word "notice" to include not only the notice of refusal by the examiner, but also the notice given by the minister to the applicant.

The Chairman: Yes. That is right. Any discussion?

Senator Bonnell: You get notice of refusal in line 2, subclause (1) as well.

Senator Lamontagne: That should stay there.

Senator Bonnell: On clause 10 it should stay there?

Senator Lamontagne: "notice of refusal under section 10, or a notice under section 12".

Senator Bonnell: I see. That is right.

The Chairman: How does this grammar go—"on which the notice was sent by notice in writing"?

Mr. Clark: We checked with the Department of Justice, sir, they accepted it. It was a result of consultation with Justice to help us with the drafting.

Senator Lamontagne: This is the Department of Justice's English.

Senator Smith: It makes for lawsuits!

The Chairman: I suppose it is clear enough, is it? Any discussion on the amendment? Shall the amendment carry?

Hon. Senators: Carried.

The Chairman: Shall clause 23, as amended, carry? Do you have further amendments, Senator Lamontagne?

Senator Lamontagne: No, but I have a question with regard to subclause (2), which says,

(2) The Review Board shall, unless the circumstances of a particular case require otherwise...

I would like to know what that means, because we are setting up now the minimums required from the board to reach a decision, and the bill says, "within four months"; but I would like to know more about the "unless", because the "unless" might mean a year.

Mr. Clark: What the "unless" is meant for, sir, is the case where we might have an owner who himself requests an extension for some reason. This will be taken care of normally well within the four-month period. It would be an extremely exceptional case that we would think it appropriate to take into consideration as a possibility. The time limits are designed to ensure that a potential exporter can get his case heard and a decision rendered within a reasonable time. We wanted to have that flexibility for the kind of case, we could not predict them all, where there were special circumstances.

Senator Bourget: So the four-month period will be the extreme limit.

Mr. Clark: That is right, sir.

Senator Lamontagne: So that the "unless" would not enable them to extend the four-month period.

Mr. Clark: The "unless" enables you, in a particular case, for particular reasons, to extend it; but you are making it pretty difficult to do unless exceptional circumstances are concerned.

Senator Lamontagne: Well, it does not say "exceptional circumstances", it just says, "circumstances".

Mr. Clark: It says, "unless the circumstances of a particular case require otherwise".

The Chairman: Who decides that?

Senator Lamontagne: The board.

Mr. Clark: It might be the Review Board, it might be on account of illness, it might be because of the individual owner requesting particularly that the Review Board not consider it for some reason. We wanted to allow that flexibility so that an exceptional circumstance could be taken care of. That is the purpose of it. It is not in any way intended to get around the four months. That is a maximum, anyway.

Senator Lamontagne: What really bothers me, Mr. Chairman, with regard to this, is not only this "unless", which seems to me to be fairly general, but also, that while we require the board to reach its decision within four months, we ask the examiner to do exactly the same determination forthwith. It seems to me, and I have tried to convince the minister and Mr. Clark of this, that we should provide a little bit more time to the examiner, and probably less time to the board.

Mr. Clark: Do you want me to answer that? I will just use the same arguments, sir. The expert examiner is saying, "This object is not of importance; these ones are." When the review board comes into it, it already is dealing with quality, which has been selected, and they are no longer necessarily dealing with the problem of separating the dross from the gold. They are evaluating that gold quality. They are saying, "What karat is it?"

Senator Lamontagne: The examiner has to do exactly the same thing. He has to decide first whether the object is within the control list, and this, of course, can be decided forthwith; but then he has to carry out exactly the same tests. If these objects are deemed to be included in the control list, he has to go through these two tests,

which some colleagues of mine said were very difficult to apply, a moment ago, and I agree that this will be difficult; but we ask the examiner to determine on these two tests of outstanding significance, and part of our national heritage, and all that sort of thing, forthwith. Then we let the board go and make its own decision within four months.

Mr. Clark: Well, it is just the higher level of the selection process.

The Chairman: Would you not say that the examiner has to make the most difficult selection, because he has to decide not only what is to be included but what is to be rejected?

Mr. Clark: No, sir, I think he has an easier decision to make, because we have the feeling that it is going to be easier for the expert examiner because he is going to have more pressures to say no. It is more likely that the appeals coming up to the Review Board—and we have the experience of this happening in the United Kingdom—that the Review Board is in a position to make harder judgments. The expert examiner, if he has a doubt, is going to say no, and it is the Review Board that is going to have to look at the thing in its entire context, and with a group who are going to say, "Now, really, is it that important? Given the circumstances, is an institution going to be really interested in it? Do we have any indication?" And then make that judgment.

The Chairman: Any further questions on clause 23?

Senator Lamontagne: In subclause (5)(a) it says, if the board "is of the opinion that a fair offer to purchase the object might be made". I think that with the generous provisions of the bill in other parts the board will be more or less forced to come to the conclusion or to form the opinion that a fair offer to purchase the object might be made. Would that be your view if you were a member of the board? I ask this because we are dealing now with all the delays that have been complained about and if the board is of the opinion that a fair offer could be made, then there is another period which is provided for between two or six months.

Mr. Clark: Well, senator, I think I could answer your question by saying that I could imagine a situation where the Review Board has an object and is considering an appeal, and it might be a rather expensive and rather strange object in terms of the interest of custodial institutions. Let us say it could be quite expensive and that there are already three of them in some museum. Then it would be the Review Board's responsibility to ponder, "Now, are there any other museums who really want it, and at that price, even taking into consideration tax relief." Perhaps the chap has already gone around the museums beforehand because he is a public spirited citizen and is conscious of wanting to do the right thing, and no one has taken him up on it. That is where the Review Board is going to take into consideration the interest of that individual and say, "We are convinced that no institution is going to be interested in this object," and grant the chap his export permit to assist him and to prevent him from having to go through a useless further delay. That is why we have that clause

there, to make sure that they remember that they have to have some indication of interest somewhere, or that it could be elicited.

Senator Bonnell: I notice that in clause 23(3) it says:

(3) In reviewing an application for an export permit, the Review Board shall determine whether the object in respect of which the application was made

- (a) is included in the Control List;
- (b) is of outstanding significance for one or more of the reasons set out in paragraph 8(3)(a); and
- (c) meets the degree of national importance referred to in paragraph 8(3)(b).

But it does not say, and there should be a new subclause here, I think, "or will significantly diminish the national heritage." The fact that it is only of national importance does not give it the right to be exempted, it also has to diminish the national heritage.

Mr. Clark: That refers to (3)(b) and this refers back to clause 8(3)(b) where it says:

- (b) whether the object is of such a degree of national importance that its loss to Canada would significantly diminish the national heritage.

Senator Bonnell: But it does not say anything about the national heritage being significantly diminished.

The Chairman: But that is what it means.

Senator Bonnell: But that is not what it says. At any rate you think it means the same thing?

Mr. Clark: Yes, sir. Clause 8(3)(b) says:

- (b) whether the object is of such a degree of national importance that its loss to Canada would significantly diminish the national heritage.

So you are just referring right back to that clause, even though you are not repeating all the words. But when you refer to the clause, then this is the effect of the whole clause.

Senator Lamontagne: Then coming back to subclause (2) and looking at it as it reads now and coming back to the word "unless" there, I do hope that this cannot be interpreted as giving the power to the Review Board to refuse to consider or review an application.

Mr. Clark: Absolutely not.

Senator Lamontagne: Not being a lawyer, I would not know, but could there be that kind of interpretation?

The Chairman: Well, we have our counsel here.

Mr. R. L. du Plessis, Department of Justice, Legal Adviser to the Committee: In that interpretation I think we have to look at the word "otherwise".

Senator Lamontagne: It says "...shall, unless the circumstances of a particular case require otherwise, review...". They might say, "We do not like this request, so we will not review it." I want to make sure that in the legal language we are not empowering the board to refuse to review an application.

Senator Bonnell: The circumstances could be the fact that they don't want to hear it.

The Chairman: Could that interpretation be placed on this clause?

Mr. du Plessis: I do not think so. I think it is a question here of the word "circumstances" as well. It says, "unless the circumstances of a particular case require otherwise," and I cannot see that the circumstances would require that the board should not review the application.

Senator Bonnell: What would happen if, instead of reading it the way you read it, they were to read it in another way and said, "unless the circumstances of a particular case require," and, having a comma there, then continue "otherwise review an application". There is no comma in either place so if you stop after the word "require" you get altogether a different interpretation.

Mr. Clark: But is there not a comma after "otherwise" in the text?

Senator Bonnell: Yes, there is. I must say that I made a pencil mark which tends to obscure it.

Senator Lamontagne: I understand that commas are very important. So we are reasonably sure that the board is not empowered by this clause to turn down or to refuse to review an application.

Mr. Clark: Yes, sir.

Mr. du Plessis: I think we have the words "the Review Board shall review an application."

The Chairman: This really refers to the time required, that is to say to the time limit, and not to the review.

Mr. Clark: That is right.

The Chairman: The requirement to review is covered in other clauses, but this clause has to do with the time limit involved.

Senator Lamontagne: I think subclause (1) gives the right to an applicant to appear before the board, and then subclause (2) prescribes the duties of the board. So, provided that our legal people can guarantee that the board cannot turn down a request to review an application, I would be satisfied.

Mr. Clark: After you raised the question I checked it out and that was the opinion I was given and it gibes with your legal opinion here.

The Chairman: Is there any further discussion on clause 23?

Senator Bourget: I thought this clause was designed to expedite rendering a decision in a special case where a person would like to have a decision right away because otherwise he might not be able to sell. This is not clear. Of course, I am not a lawyer.

Senator Lamontagne: It would have been clearer if they had said, "shall review the application for an export permit and, unless the circumstances of the case require otherwise, render its decision within..."

Senator Bourget: Yes, then the "otherwise" would apply only to the rendering of the decision, not to the review.

Mr. du Plessis: It applies in both respects now.

Senator Lamontagne: That is what the wording is.

Mr. du Plessis: I do not think I can give you a categorical guarantee on the interpretation of that section.

Senator Bourget: Let us stand it.

The Chairman: And try to clarify it.

Senator Bourget: Yes, because, as Senator Lamontagne has said it is not really clear.

Senator Lamontagne: I would much prefer if the "unless" would apply to rendering of the decision.

Senator Bourget: How would it read then?

Senator Lamontagne: It would read:

The Review Board shall review an application for an export permit and, unless the circumstances of a particular case require otherwise, render its decision within four months.

The Chairman: That is better; that makes it clear; but that would be an amendment.

Senator Lamontagne: It is not necessarily good legal wording.

Senator Bourget: That is so.

Mr. du Plessis: I would agree with that, if that is your concern, about the qualification of the time of rendering the decision. I would think that with an amendment like that you would be accomplishing that end.

Senator Lamontagne: It would make it clearer.

Mr. du Plessis: Yes.

Senator Lamontagne: I do not think we should open up the bill for that, but since we have agreed to open up the bill you might consider this also with your legal advisor.

Mr. Clark: Yes, sir, indeed, I will.

Senator Bourget: Because you will still be left with that part of the sentence "unless the circumstances of a particular case require otherwise". What are the special circumstances and will the decision be rendered in advance of the four months, or expedite the decision? That is not clear in my mind.

The Chairman: It is clear as Senator Lamontagne has reworded it, to have the qualifying clause after "review," before the word "render"—that is:

and unless the circumstances require otherwise, to render its decision within four months.

Then it is clearly related to the time period and not to the review itself. Shall we let the clause stand?

Senator Bourget: Personally I have no objection, but if you have stood some other clauses I wonder if we could stand this one also and have the expert or advisor look into it, as far as the legal aspect goes.

The Chairman: I think our legal counsel agrees that that gives a clearer meaning.

Senator Bourget: Well, that is okay with me.

Senator Lamontagne: Especially if it is not your intention to give that power to the board to review or refuse, you might as well make it clear.

The Chairman: Shall we let the clause stand?

Mr. Clark: I do not see any objection if the legal advisor does not.

Mr. du Plessis: If it accomplishes the policy objective, I see no problems from the legal point of view.

Senator Bourget: Are you making that amendment, Senator Lamontagne?

Senator Lamontagne: Since we will have to come back, I would like to have this system of check and counter check and would not like to settle the wording on the spur of the moment. You have your own legal advisors. I have great confidence in our legal advisor, but I would really prefer if we had confirmation from them.

The Chairman: It all depends on what the intention was.

Mr. du Plessis: It is never a good thing to draft in committee.

The Chairman: Clause 23 stands.
Clause 24.

Senator Lamontagne: In this clause we are dealing with the cash offer and its determination. I recall that Senator Grosart made a point in his speech in the Senate, that he really did not know from the bill what was meant by this cash offer. Is this a kind of smaller Canadian price or is it an international price?

Mr. Clark: We had to leave this open to this extent, that obviously where there is an offer from abroad this is going to be the operative price as far as the review board is concerned. In the case where there is not, then you have the procedure of establishing a price within the board, because either the owner or the interested institution has applied to the review board for a ruling and you bring in valuation experts to help you decide this cash offer which is going to go back to the two interested parties. Then there is the question of tax relief. Tax relief is connected to the object so, in the public interest you are expecting the institution to get a little less, you are expecting the individual who is selling it is going to make more profit than if he sells it abroad. In other words, you are sharing this advantage a little bit. So we wanted to get that kind of flexibility without stating exactly what price it is, because each situation is going to be different. The question is, is it a fair cash offer? In clear cases where it does exist, you have not got a problem. But there are other cases where you might have a problem.

Senator Bourget: What happens in the event there is quite a big difference and the person who wants to sell an object says, "No, I will not sell it; I cannot accept that price"? Will the decision of the Review Board define it, even to taking into account the tax incentive?

Mr. Clark: If the Review Board has made a ruling, this is because either the institution or the individual has gone to the Review Board saying, "During the delay period, we cannot agree on a price." Then the Review Board establishes this fair cash offer. If the institution will not accept it and the individual does, then the chap gets his export permit.

If it is the reverse, if the institution accepts the fair cash offer but the individual does not, then he has the right to take the object home and he can dispose of it in Canada. But he will have to wait two years before he can re-apply for an export permit, to export it again.

Senator Bourget: Do you think it is fair?

Mr. Clark: We think it is fair because the point is that the Review Board has the expertise to come to this fair cash offer. They have made the decision and they are giving just a little bit of the edge to the institution to the extent that if they accept it but the individual does not, the chap does not have to sell to the institution but he must wait two years before he can re-apply and go through the whole procedure again. But there is nothing to prevent him from disposing of it in Canada or if he likes he can take it home or do anything else he likes with it.

Senator Bourget: During those two years he will have very little chance.

Senator Lamontagne: He will have to go through the same process and probably will get the same ruling.

Senator Bourget: From the same people.

The Chairman: Do you think that the fact that the seller who sold in Canada can get this tax exemption of his capital gains would have the effect of Canadian buyers making lower offers, taking that into consideration?

Mr. Clark: I do not think it will have an effect on the market really in that sense because you are not expropriating, you are not preventing the market place, you are delaying. You are only delaying it and if the price is in the market place the institution is going to be interested or not.

The Chairman: Supposing a person has an object which he can sell abroad for \$1,000, that becomes the market price. Suppose somebody in Canada, says, "If this fellow sells it outside for \$1,000 he does not get any tax exemption, but if we offer him \$800 there will be tax exemption and he will be just as well off as getting \$1,000 from outside". In actual effect he gets a lower offer than he otherwise would get.

Mr. Clark: To follow your analogy, it would be closer to \$900 or \$950, because he is obviously going to have to have a major benefit. The whole purpose of the tax relief is to give him the benefit, because it is encouraging the flow of objects of that certain quality into the institution.

The Chairman: I understand the intent. What I am questioning is whether that will actually be the result or whether somebody will make fine calculations as a result of which he will be no better off and will not get the full benefit of the act.

Mr. Clark: In that case he would not accept the institution's offer. He would appeal to the Review Board, which would then make a fair cash offer in the light of his explanation of why the institution's offer was not high enough.

Senator Bourget: Suppose the institution's offer is so low in comparison to a private offer that even with the tax incentives the return would be the lowest possible return; what would be the situation in that case? Would the decision of the Review Board be final?

Mr. Clark: Let me see if I follow you. Suppose an institution has offered \$50,000. The owner says he wants \$55,000. They cannot agree. They go to the Review Board for a ruling. The Review Board takes into consideration all the facts of the case. They hear from the owner. They hear from the institution. They listen to the people within Canada or outside Canada who are valuation experts. They reach the opinion that \$53,500 is the fair cash offer. If the individual does not accept that, but the institution does, then the individual must wait. He can dispose of it as he likes in Canada. He can take it home. But he must wait two years to reapply for the export permit. If the situation is the reverse, he gets his export permit.

Senator Bonnell: Am I correct that if you apply for an export permit, are refused, and then appeal to the Review Board, the Review Board may declare a waiting period in order to see if an institution wants the object? If nobody wants it and it cannot be sold, it seems to me that the applicant must then reapply for a licence.

Mr. Clark: No. All he needs to do is to declare at the end of the delay period that he still wants to proceed. The owner may decide to stop the process altogether, in which case the Review Board would not know what had happened. This is the way of keeping informed. The chap has to reassert his interest in continuing with his export permit application.

Senator Bonnell: If he did not want to use his permit he would not use it, but it seems to me that after the Review Board has heard the application and cannot find anybody to buy the object, they still would not give him a licence unless he applied a second time.

Senator Lamontagne: He would not have to apply.

Senator Bonnell: It says here that he does.

Mr. Clark: It is not an application. He just has to alert the Review Board that he wishes to proceed. Otherwise the Review Board would not know what had happened. This is just telling the Review Board that no conclusion has been reached, that no one is interested and that the person is requesting that his permit be issued; and the Review Board does that forthwith at the end of the delay period. It is not a reapplication.

Senator Lamontagne: Under clause 24(3), when the board receives a request it is asked to determine the amount of a fair cash offer, but there is no time limit for that determination.

Mr. Clark: Yes. It has to be within one month and the six months in the application for them to apply for it.

Senator Lamontagne: Well, they have to wait for six months to issue a permit. If they receive a request to determine a cash offer and it goes beyond the six months, then what?

Mr. Clark: The request for determination must be made within the six months, but 30 days before its conclusion in order to allow for the board to act before the delay period expires. Obviously, when they are both negotiating, sir, the need for dispatch is less important because we have them already negotiating. So we can relax a little bit here in that the owner and the institution are both asking for the fair cash offer.

Senator Lamontagne: You would expect that within this 30-day period the board would determine what the cash offer should be.

Mr. Clark: That is right. Let me give you an example. Assume there is an expert in New York whose advice is necessary to both the owner and the institution. In that case there might well be a time period in order to get this absolutely right.

The Chairman: Shall clause 24 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 25 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 26 carry?

Senator Lamontagne: Mr. Chairman, the only reservation I have here is with respect to the word "unless." Does it apply to the delay or does it apply to the making of the determination?

The Chairman: You are referring to clause 26(4)?

Senator Lamontagne: Yes.

The Chairman: I see your point. Shall clause 26 stand?

Hon. Senators: Agreed.

The Chairman: Clause 27—income tax certificate. Any questions on clause 27? Shall clause 27 carry?

Hon. Senators: Carried.

The Chairman: Clause 28—report to minister. Shall clause 28 carry?

Hon. Senators: Carried.

The Chairman: Clause 29—financial.

Senator Lamontagne: I am going to ask what is perhaps a difficult question on this one. When is the minister going to determine when he will make a grant or a loan, and to what institutions?

Mr. Clark: These are guidelines that will have to be worked out. The point is, we want to be able to make both grants and loans. All institutions in all parts of Canada are not in the same financial position with regard to acquisitions. We are therefore going to have to set up some kind of an equalizer, so that if an object turns up in Prince Edward Island, and it really is a national

treasure, but belongs in Prince Edward Island, we are going to have to make it possible for Prince Edward Island to make the offer to the owner in a way that we might not have to do to an institution, say, in Toronto, Montreal or Vancouver, where there is readier access to funds either from the provincial government or from the private sector. As I say, we want to be able to indulge in both kinds of activity. All I can say is that we are aware of the problem which you pose, sir, and that we are going to have to work out a system, as we do with programs throughout the country.

Senator Lamontagne: The minister would offer grants to Prince Edward Island and loans to Montreal.

Senator Bonnell: That is right. I think we should put that right in the act.

Senator Lamontagne: And tax Alberta.

The Chairman: Senator Cameron would have something to say about that.

Senator Lamontagne: While I am not opposed to carrying clause 29, I think that both clauses 29 and 30 are more or less related, and I do have some questions about them. I have no amendments to suggest at all.

The Chairman: Perhaps we should let them stand for a while, then.

Senator Lamontagne: Yes, until we deal with section 30.

The Chairman: Well, clause 29 stands temporarily.

Clause 30—Canadian heritage preservation endowment account.

Senator Lamontagne: Under these two clauses the minister can choose, really, whether to give a loan out of this fund, which is supplied by private donations, or to give this loan or make grants through the appropriation that he will receive from Parliament under clause 29.

Mr. Clark: Sir, under clause 30 the purpose is for grants to be made. This account is a non-lapsing account, and this is the appeal to the private sector. Someone may say, "I would like this money to be used for the purchase of antique cars in the prairies," or it might be for the repatriation of Newfoundland's heritage. These kinds of conditions we fully intend to respect within clause 30. This is different from the funds which are being voted by Parliament, so that this is just a way of encouraging the private sector to participate in the heritage, only in the spirit of what the federal government is trying to do, to allow them to express their interest in the heritage by making donations of money as well as by making donations of actual cultural property to their institutions, with the tax benefits that come in that way, or through sale when it is a case of export, and having the capital gains advantage.

Senator Lamontagne: But where do you see in clause 30 that the minister is limited to making grants out of that fund?

Mr. Clark: He does not loan money out of the fund, sir.

30. There shall be established in the Consolidated Revenue Fund a special account to be known as the

Canadian Heritage Preservation Endowment Account to which shall be credited

(a) all moneys received by Her Majesty by gift, bequest or otherwise for the purpose of making grants to institutions and public authorities in Canada . . .

It is restricted to grants purposely there, whereas above it is grants and loans.

Senator Lamontagne: But are you not afraid that if there are no specific conditions imposed by the donor that contributed to that fund, Treasury Board will say to the minister, "Well, you have money in that fund, so you are not going to get appropriations to make grants out of your own account."

Probably it is unfair to ask you that question, but it worries me because I was a member of Treasury Board myself at one time.

Mr. Clark: I would be most pleased to think we could collect the kind of money that would cause Treasury Board to make that judgment. I am hopeful we can make a healthy account. I doubt whether it is going to affect the kind of money that Parliament will, each year, in its estimates, be placing at the disposal of the minister for the purposes of repatriation or control.

Senator Bourget: But there are no guidelines established.

Mr. Clark: There will be, though, sir.

Senator Lamontagne: I am less optimistic than you are, but I hope you are right.

Senator Bourget: I think objections were raised in the other place on that particular point. I do not remember exactly what they were, however.

The Chairman: Do you want to stand these two clauses, in order to be able to discuss them further with the minister?

Senator Lamontagne: No, Mr. Chairman. They are future problems for the minister, not for us.

The Chairman: Well, are we in a position to carry clauses 29 and 30, then?

Senator Lamontagne: Yes.

The Chairman: Shall clause 29 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 30 carry?

Hon. Senators: Carried.

The Chairman: Clause 31—foreign cultural property. Shall clause 31 carry?

Hon. Senators: Carried.

The Chairman: Clause 32—designation of cultural property. Any questions?

Senator Lamontagne: Excuse me, Mr. Chairman. Could you wait for a minute, please?

Mr. Clark: Could I explain that clause to you, sir?

Senator Lamontagne: Yes, please.

Mr. Clark: The purpose is that a foreign state, with which we have signed a cultural property agreement, or which is a party to a multilateral treaty with respect to cultural property, in the event that we want to get something back from them, knows what our cultural heritage is. This is just to tie in with clause 31. It is the other side of the coin.

Senator Lamontagne: My only worry here is that there is no provision to empower the minister to take action to recover a cultural property which has been exported illegally from Canada. Perhaps it is not necessary I do not know.

Mr. Clark: It is not necessary because for a country to be a signatory to the UNESCO convention they have to do what this bill does, so that it is open to Canada to enter their courts in the same way as we have given them access to our courts. This is what they have to do before they can be a signatory to the treaty. In any bilateral treaty we would enter into, of course, we would demand the same right of access so that we could recover our property.

Senator Lamontagne: So the normal procedure, presumably, would be that the Secretary of State would receive information than an object has been exported illegally from Canada, and then it would go to the Minister of External Affairs.

Mr. Clark: In the usual way. That is right.

Senator Lamontagne: I hope he will not be away at that time.

The Chairman: Are you satisfied on clause 32? Any further questions on clause 32? Shall clause 32 carry?

Hon. Senators: Carried.

The Chairman: Clause 33—regulations. Any questions?

Senator Lamontagne: As far as I am concerned, Mr. Chairman, I have no further questions.

The Chairman: Shall clause 33 carry?

Hon. Senators: Carried.

The Chairman: Clause 34—offences and penalties. Shall clause 34 carry?

Hon. Senators: Carried.

The Chairman: Clause 35. Shall clause 35 carry?

Hon. Senators: Carried.

The Chairman: Clause 36. Shall clause 36 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 37 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 38 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 39 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 40 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 41 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 42 carry?

Hon. Senators: Carried.

The Chairman: Clause 43—general. Shall clause 43 carry?

Hon. Senators: Carried.

The Chairman: Clause 44—customs officers' duties. Shall clause 44 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 45 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 46 carry? This is "Report to Parliament".

Hon. Senators: Carried.

The Chairman: Clause 47—Copyright Act. Are there any questions on clause 47?

Senator Lamontagne: Carried. This is a consequential amendment following from other clauses.

The Chairman: Shall it carry?

Hon. Senators: Carried.

The Chairman: Clause 48—the Income Tax Act. Shall it carry?

Senator Lamontagne: That is another consequential amendment.

The Chairman: Shall it carry?

Hon. Senators: Carried.

The Chairman: Shall clause 49 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 50 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 51 carry?

Hon. Senators: Carried.

The Chairman: Then we come to clause 52. Shall it carry?

Senator Bonnell: Why does the act not come into effect when passed? Why does it have to wait to come into force on a day to be fixed by proclamation?

Mr. Clark: Because we have to set the thing up. We cannot do that until we are sure we know what we are going to set up. So we have to organize with the customs and with the expert examiners and have a Review

Board and go through that process so that we will be ready to roll with due despatch on a date that will be proclaimed for the act to come into effect.

The Chairman: Shall clause 52 carry?

Hon. Senators: Carried.

The Chairman: Then that completes the clauses, except clauses 1 to 14 which we stood.

Senator Lamontagne: And I think Mr. Clark understands very well the problem there because it was raised by Senator Bonnell and myself.

Mr. Clark: As I understand it, it comes up only in clauses 7 and 8. In fact it begins with clause 8.

Senator Lamontagne: Yes. I can review that with you when we adjourn.

Senator Bonnell: And then there is a suggested amendment to clause 12.

The Chairman: Shall we adjourn then to meet tomorrow morning to hear the minister on this?

Senator Lamontagne: Mr. Clark suggests, and I see no objection to this, that we could carry clauses 2 to 7, inclusive. That would be up to but not including clause 8.

The Chairman: Shall clauses 2 to 7, inclusive, carry?

Hon. Senators: Carried.

The Chairman: That leaves clauses 8 to 17, and clauses 23 and 26 be dealt with.

Senator Lamontagne: I do not think it will take much time to finalize matters. The minister has been aware of the proposed amendments, except for the one this afternoon, which is really just a matter of drafting.

The Chairman: The meeting will adjourn, then, until tomorrow morning at 9 o'clock, at which time we will meet in room 263-S.

The committee adjourned.

Ottawa, Thursday, May 1, 1975

The committee resumed at 9 a.m.

Senator Chesley W. Carter (*Chairman*) in the Chair.

The Chairman: Honourable senators, we have before us Bill C-33, and the clauses we have to deal with are the clauses that were stood yesterday. These clauses were 8 to 17, inclusive, plus 23 and 26.

We have with us Mr. Clark, who was with us yesterday, and who needs no further introduction.

I understand Mr. Clark has a statement to make, so we will start with that.

Mr. Clark: Honourable senators, I sought legal advice on the points raised by Senator Lamontagne and Senator Bonnell concerning the review board's ability to act with regard to clause 8 subclauses (2) and (4). It was explained that it was necessary to set out certain duties of the Review Board by statute, as in clause 17. This gives the

board the statutory authority to make decisions that have a direct effect on persons, and which could not be made without such authority.

The review board informing the minister, as under clause 8, is an administrative matter, and no statutory authority is required. If the board receives copies of advice from the expert examiners, it can read them, and it might be the administrative secretary who does so. If something is amiss the minister can be informed. In fact, it would be expected that the board would take this action. However, if the committee feels strongly about the question the minister would not object to the words "and the minister" being added after "board" in clause 8(2), line 18, and clause 8(4), line 47.

Senator Bonnell: I so move.

The Chairman: Yes. It is moved by Senator Bonnell, seconded by Senator Bourget, that clause 8(2) be amended by adding, at line 18, "and the minister", after the word "board", and the same thing in clause 8(4), line 47.

Are there any more questions on clause 8?

Shall clause 8 as amended carry?

Hon. Senators: Carried.

The Chairman: Clause 9. Shall clause 9 carry?

Hon. Senators: Carried.

The Chairman: Clause 10. Shall clause 10 carry?

Hon. Senators: Carried.

The Chairman: Clause 11. Shall clause 11 carry?

Hon. Senators: Carried.

The Chairman: Clause 12. Shall clause 12 carry, as amended?

Hon. Senators: Carried.

The Chairman: Clause 13. Shall clause 13 carry?

Hon. Senators: Carried.

The Chairman: Clause 14. Shall clause 14 carry?

Hon. Senators: Carried.

The Chairman: Clause 15. Shall clause 15 carry, as amended?

Hon. Senators: Carried.

The Chairman: Clause 16. Shall clause 16 carry?

Hon. Senators: Carried.

The Chairman: Clause 17. Shall clause 17 carry?

Hon. Senators: Carried.

The Chairman: Clause 18 was carried yesterday. Now we move to clause 23. Mr. Clark has a statement to make on clause 23.

Mr. Clark: With regard to clause 23(2), and clause 26(4), the minister has no objection if the wording is changed in 23(2) to read, "the Review Board shall review an applica-

tion for an export permit and, unless the circumstances of the particular case require otherwise, render its decision . . ." et cetera.

Senator Smith: What is the purpose of the change?

Mr. Clark: To make sure it is the time period to which the "unless" phrase pertains.

Senator Smith: In the early morning light it seems clear to me.

Senator Lamontagne: The objection I raised yesterday afternoon, senator, was that I was afraid that the words, in 23(2), "unless the circumstances of a particular case require otherwise" might apply both to the reviewing of an application and to the rendering of a decision by the board, and I do not think that the word "unless" should apply to the reviewing of an application. I think the board should be forced to review an application . . .

Senator Bourget: . . . within the time.

Senator Lamontagne: Yes. To review the application, and then render its decision within the four months, "unless . . ."

[Translation]

Mr. Clark: Senator, can I ask a question in French?

Senator Lamontagne: Yes.

Mr. Clark: Is it clearer when you read the french text? For me, it's clearer.

Senator Lamontagne: It's exactly the same thing, Mr. Clark, because "sauf circonstances spéciales" applies to the whole clause, "sauf circonstances spéciales".

Mr. du Plessis: It is clearer in french.

Senator Lamontagne: It is clearer and confirms our understanding of the clause.

Mr. Clark: Yes, I agree with you.

[Text]

Senator Smith: Is this going on the record?

The Chairman: Yes. He is asking if it is as clear in French as it is in English. That is what I understood.

Are there any further questions on clause 23? It is moved by Senator Lamontagne, seconded by Senator

Bonnell, that clause 23(2) be amended by moving the phrase "unless the circumstances of a particular case require otherwise" from its present position to after the word "and" in line 28.

Any further amendment to section 23? Any further questions? Shall clause 23, as amended, carry?

Hon. Senators: Carried.

The Chairman: Clause 26.

Senator Lamontagne: This is the same amendment, exactly, which would change paragraph 4.

The Chairman: It is moved by Senator Lamontagne, seconded by Senator Bonnell, that clause 26(4) be amended in exactly the same way as clause 23(2), by transferring the phrase "unless the circumstances of a particular case require otherwise" to after the word "and" in line 24.

Shall clause 26(4), as amended, carry?

Hon. Senators: Carried.

The Chairman: Are there any further questions on clause 26? If not, shall clause 26 carry?

Hon. Senators: Carried.

The Chairman: Now we come back to the bill itself. Shall the title carry?

Hon. Senators: Carried.

The Chairman: Shall the preamble carry?

Hon. Senators: Carried.

The Chairman: Shall the bill carry, as amended?

Hon. Senators: Carried.

The Chairman: Shall I report the bill, as amended?

Hon. Senators: Agreed.

The Chairman: Thank you, honourable senators.

Mr. Clark: Mr. Chairman, I thank honourable senators for their kind consideration of the bill.

The Chairman: Thank you.

The committee adjourned.



FIRST SESSION—THIRTIETH PARLIAMENT
1974-75

THE SENATE OF CANADA
PROCEEDINGS OF THE
STANDING SENATE COMMITTEE ON
**HEALTH, WELFARE AND
SCIENCE**

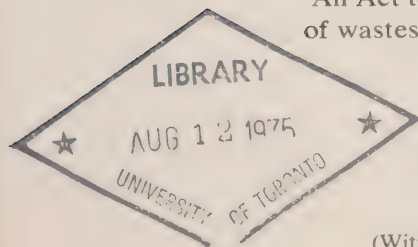
The Honourable CHESLEY W. CARTER, *Chairman*

Issue No. 6

THURSDAY, JUNE 12, 1975

First Proceedings on Bill C-37 intituled:

“An Act to provide for the control of dumping
of wastes and other substances in the ocean”



(Witnesses: See Minutes of Proceedings)

THE STANDING SENATE COMMITTEE ON
HEALTH, WELFARE AND SCIENCE

The Honourable C. W. Carter, *Chairman*.

The Honourable M. Lamontagne, P.C.,
Deputy Chairman.

and

The Honourable Senators:

Argue, H.	Goldenberg, H. C.
Blois, F. M.	Inman, F. E.
Bonnell, M. L.	Langlois, L.
Bourget, M.	Macdonald, J. M.
Cameron, D.	McGrand, F. A.
Choquette, L.	Neiman, J.
Croll, D. A.	Norrie, M. F.
Denis, A.	*Perrault, R. J.
*Flynn, J.	Smith, D.
Fournier, S.	Sullivan, J. A.—(20)
(<i>de Lanaudière</i>)	

**Ex officio* member

(Quorum 5)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, 11 June, 1975:

Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Macnaughton, P.C., seconded by the Honourable Senator Denis, P.C., for the second reading of the Bill C-37, intituled: "An Act to provide for the control of dumping of wastes and other substances in the ocean".

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Macnaughton, P.C., moved, seconded by the Honourable Senator Fournier (*de Lanaudière*), that the Bill be referred to the Standing Senate Committee on Health, Welfare and Science.

The question being put on the motion, it was—
Resolved in the affirmative.

Robert Fortier,
Clerk of the Senate.

Minutes of Proceedings

June 12, 1975

Pursuant to adjournment and notice, the Standing Senate Committee on Health, Welfare and Science met this day at 9:35 a.m.

Present: The Honourable Senators Carter (*Chairman*), Bourget, Denis, Fournier (*de Lanaudière*), Inman, Langlois, Macdonald, McGrand, Neiman and Norrie. (10)

In attendance: Mr. R. L. du Plessis, Legal Adviser to the Committee.

The Committee proceeded to examine Bill C-37 intituled: "An Act to provide for the control of dumping of wastes and other substances in the ocean".

The following witnesses, representing Environment Canada, were heard in explanation of the Bill:

Mr. Ian D. Macaulay,
National Ocean Affairs Officer,
Ocean and Aquatic Affairs,
Oceanography Branch;

Mr. Alan Willis,
Legal Services;

Mr. John R. Monteith,
Chief of
Hazardous Materials Management,
Environmental Protection Services.

At 11:15 a.m., the Committee adjourned until 1:45 p.m.

The following witnesses were heard:

Mr. Rémi L. Geoffrion,
Legislation Section,
Department of Justice;

Mr. Alexandre Covacs,
Chief,
Translation Bureau (Justice);

Mr. A. H. E. Popp,
Legislation Section,
Department of Justice.

At 2:05 p.m., the Committee adjourned to the call of the Chairman.

ATTEST:

Denis Bouffard,
Clerk of the Committee.

At 1:50 p.m., the Committee resumed.

Present: The Honourable Senators Carter (*Chairman*), Bourget, Denis, Fournier (*de Lanaudière*), Inman, Macdonald, McGrand, Neiman, and Norrie. (9)

Present but not of the Committee: The Honourable Senator Bélisle.

In attendance: Mr. R. L. du Plessis, Legal Adviser to the Committee.

The Committee continued its examination of Bill C-37 intituled: "An Act to provide for the control of dumping of wastes and other substances in the ocean".

The Standing Senate Committee on Health, Welfare and Science

Evidence

Ottawa, Thursday, June 12, 1975

The Standing Senate Committee on Health, Welfare and Science, to which was referred Bill C-37, to provide for the control of dumping of wastes and other substances in the ocean, met this day at 9.30 a.m. to give consideration to the bill.

Senator Chesley W. Carter (*Chairman*) in the Chair.

The Chairman: Honourable senators, we have before us this morning Bill C-37, to provide for the control of dumping of wastes and other substances in the ocean. The short title of the bill is the Ocean Dumping Control Act. We have as witnesses before us representatives from Environment Canada. They are Mr. Ian D. Macaulay, National Ocean Affairs Officer, Oceanography Branch, Ocean and Aquatic Affairs; Mr. John R. Monteith, Chief, Hazardous Material Management, Environmental and Protection Service; and Mr. Alan Willis, Legal Services. Mr. Macaulay, I do not know if you wish to make a short statement. Usually we have one, but I do not know whether you are prepared.

Mr. Ian D. Macaulay, Division of Ocean Science Affairs, Oceanography Branch, Environment Canada: No, Mr. Chairman, I was not prepared to make one.

The Chairman: The witness is not prepared to make a statement. The sponsor of the bill is not here and I do not know who is taking his place.

An Hon. Senator: Who is the sponsor, Mr. Chairman?

The Chairman: It is Senator Macnaughton.

Senator Fournier (de Lanaudière): Mr. Chairman, I would like to hear a few words of general explanation about the bill, even though the witnesses may not be specially prepared. We would like them to deal with the bill and give us the substance of it.

Mr. Macaulay: May I proceed?

The Chairman: Yes.

Mr. Macaulay: Thank you, Mr. Chairman. Honourable senators, I think that by way of a brief introduction I can say that the bill is being used by Canada to ratify what is commonly referred to as the London Convention. This was a convention signed by Canada and some 80 other nations in 1972. It is more properly called the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter.

The most basic intent of the convention is that all dumping in the ocean should be regulated by means of a permit system in the countries which are signatories to the convention. Canada will use this legislation to ratify the London Convention. This permit system will give us

authority to control dumping in the ocean of all substances.

There are certain substances enumerated in Schedule I and Schedule II. In Schedule I these are substances which are known to be particularly hazardous in the marine environment and those which we do not want to dump except under rather unusual circumstances. In the second schedule you will find substances which are less noxious and less undesirable and which we will allow to be dumped under certain controls and certain conditions.

Canada has seen fit to provide for certain extensions in this country by adding the disposal of waste on ice. It was at the instigation of the Province of Manitoba, that this particular addition was made to the bill. We have also made one other addition which is not contemplated by the London Convention and that deals with the incineration of wastes at sea. It has become a practice in the United States in recent times to incinerate certain wastes at sea as a means of disposing of them. This is most commonly done with pesticides and compounds of that nature.

This bill will regulate, through this permit system, all dumping at sea except that which is incidental to the normal operations of a vessel, or dumping which is incidental to exploitation or exploration for mineral resources at sea.

Basically, the bill covers dumping from ships and aircraft at sea. It does not treat dumping from outfalls or structures attached to the land.

I think that is, in a nutshell, what the bill intends to accomplish.

The Chairman: Does the legislation apply to the Great Lakes?

Mr. Macaulay: No, it does not. The bill is intended to apply to marine waters. In clause 2(2) the sea is defined for the purposes of the bill. This is a rather complex definition which gives us some flexibility, allowing us to make some changes if there are things decided at the Law of the Sea Conference—for instance, an economic zone, and so on.

As you will notice in clause 2(3):

... "inland waters" means all the rivers, lakes and other fresh waters in Canada and includes the St. Lawrence River as far seaward as the straight lines drawn

and there are some lines defined there. So fresh waters are exempted from the provisions of the bill.

The Chairman: Does the act apply to ships dumping wastes in a harbour?

Senator Fournier (de Lanaudière): In inland waters?

The Chairman: In a coastal harbour.

Mr. Macaulay: Our answer to that question at another time, Mr. Chairman, was, if the ship dumped while at its berth, the act would not cover dumping by that vessel. That would be covered by certain other statutes. For example, the Canada Shipping Act.

Senator Fournier (de Lanaudière): Is the London Convention the first such agreement or is it a correction or modification of some other previous agreement?

Mr. Macaulay: I would ask Mr. Willis to answer that question.

Mr. Alan Willis, Legal Services, Department of the Environment: Over the years, honourable senators, there have been a number of conventions, mostly negotiated within the context of the intergovernmental maritime consultative organizations which deal with disposal of wastes at sea, but only as an incidental part of normal shipping operations. Those conventions did not cover the kind of activity we are covering here, which is deliberate transportation of wastes to the ocean in order to use the ocean as a receptacle.

The year before the London Convention was concluded in 1972 the countries of Northern Europe met in Oslo to draw up their own convention on the dumping of wastes at sea. However, while that convention was useful to us in terms of a precedent for the London Convention, it only applied to the northeast Atlantic area and only to those European countries.

Senator Fournier (de Lanaudière): How many signing countries are there?

Mr. Macaulay: There are 82 signing countries to the London Convention. There were more nations present as observers, but they did not sign the Convention.

Senator Fournier (de Lanaudière): What is the position of those who are not part of the treaty? Are they free to do what they like?

Mr. Willis: With respect to a country which has not ratified the London Convention, it would be subject to Canadian regulations within waters under our jurisdiction notwithstanding that it had failed to ratify the Convention. However, with respect to areas entirely beyond national jurisdictions in the middle of the ocean they would not be under any legal constraints.

Senator Fournier (de Lanaudière): Is that 12 miles?

Mr. Willis: That is very much in the course of negotiation internationally. In the Canadian situation we have a 12-mile territorial sea which, in many cases, is drawn from straight base lines across headlands. In addition to that we have described under the Territorial Sea and Fishing Zones Act certain fishing zones which will be covered by this legislation. Those fishing zones include the Gulf of the St. Lawrence, the Bay of Fundy and the inland sea of the west coast—the Queen Charlotte Sound, the Dixon Entrance and the Hecate Strait.

We also cover in this legislation as Canadian waters the waters covered by the Arctic Waters Pollution Prevention Act, which is basically a 100-mile belt measured from the land.

Senator Fournier (de Lanaudière): What kind of controls can be exercised over dumpers at sea?

Mr. Macaulay: In answer to that question, I believe I can tell you that the fisheries and marine services have for some years operated research stations which are concerned with determining the effect on biological life of pollutants added to the sea. We also have oceanographic laboratories concerned with monitoring the conditions of the sea in terms of physical and chemical disturbances. Furthermore, we have in place a fisheries inspection service which is particularly concerned with monitoring the effect on biological life.

Senator Neiman: Mr. Chairman, Mr. Macaulay has been talking about how the government can monitor; but what can actually be done about overseeing the international waters? What action do the signatories to this Convention propose taking? It is one thing to check it afterwards and see that dumping has taken place; but how will you prevent dumping? How will you enforce this legislation and on what international basis?

Mr. Macaulay: The signatories have pledged themselves to co-operate with one another in putting arrangements into effect which will be used to regulate and deter ocean dumping carried out outside the permit system. There are various mechanisms which can be used to carry this out. The international organization, the intergovernmental organization which will be set up following the 15th ratification of the Convention is one.

Senator Neiman: What do you mean by the 15th ratification? Do you mean once 15 countries have signed?

Mr. Macaulay: Yes. The London Convention was subject to ratification. Thirty days following the 15th ratification the Convention is to come into effect or into force. The depositary government, which is the government of the United Kingdom, is obliged to call an intergovernmental meeting in the 90-day period following the coming into force of the Convention. The intergovernmental meeting will concern itself with setting up an organization to be responsible for enforcement and secretariat duties on an international basis.

Senator Neiman: Have the countries which intend to ratify or have ratified the London Convention passed, or will they pass, the same type of law in almost identical terms?

Mr. Willis: A number of statutes have been passed by a number of countries. The Scandinavian countries have statutes on the books. The United States has had a statute on the books since 1972 to deal with ocean dumping. Certain other countries such as the U.K. have bills before their parliaments. The various bills to which I am referring are identical in their intention; however, they are all tailored to the various differences in the domestic legal systems of the countries concerned.

Senator Neiman: But the principal provisions are identical so that there will be no conflict of intent or purpose.

Mr. Willis: That is correct.

Senator Macdonald: Will the penalties be the same?

Mr. Willis: No. The penalties are not identical in each case.

Senator Neiman: Why not? Do you mean that we could fine someone \$100,000, for example, but another country finding us at fault under the law could only fine us \$10,000?

Mr. Willis: That is correct. There is no provision in the international convention for identical penalties or identical fines. Harmonization in this regard might be one of the matters which over the years will be discussed within the context of the international secretariat to be set up to consider problems that arise under the Convention, but because the Convention in its initial form contains no clauses on this subject, each country is at liberty to decide what the proper fine should be.

Senator Neiman: What will be the court of jurisdiction?

Mr. Willis: In the case of Canada, clause 19 of the bill covers that point. On page 14 in clause 19 we talk about any court of jurisdiction in respect of similar offences. This might vary from province to province but, basically, in any case you would within a given province look at the court which has jurisdiction to try summary conviction offences.

Senator Bourget: That means that you could use a provincial court and not just a federal court. That was a question asked by Senator Connolly of Senator Macnaughton yesterday when Senator Macnaughton sponsored the bill. At that time Senator Macnaughton did not know whether it would be a federal or provincial court. But who would decide how we should deal with clause 19? In other words, who would decide what court should deal with it?

Mr. Willis: The question would be resolved simply by looking to see what court has jurisdiction to try summary conviction offences under Part 24 of the Criminal Code, and of course that might vary from province to province.

Senator Neiman: But if a ship is caught on the high seas somewhere, I cannot imagine a court in Saskatchewan assuming jurisdiction in that situation. You see that is outside territorial waters.

Senator Macdonald: It says the territorial division nearest the place where the offence was committed.

Senator Neiman: But this could be complicated if a Canadian ship were caught by another ship violating the treaty in international waters, but it happened to be closer to, say, England or Denmark. Who then assumes jurisdiction?

Mr. Willis: If the offence takes place in waters under Canadian jurisdiction, which would include not only our territorial seas but our fishing zones and any additional zones to be prescribed under paragraph 2(2)(e) of this act, then under subsection 19(1) the nearest court would have jurisdiction. However, if someone were detected in a violation in waters entirely beyond the national jurisdiction of any country and were subsequently found and arrested in Canada, then, under section 19(2) the court where he was arrested would have jurisdiction.

Senator Fournier (de Lanaudière): But defence lawyers might very well make the point that a provincial court can hardly have jurisdiction over events happening outside their own territory. In my opinion this should be left to a federal court. It is an offence against the country and not simply against the province.

Senator Bourget: Well, you have the lakes also, and the lakes come under the jurisdiction of the provinces. So there could be complications there.

The Chairman: This does not apply to inland waters?

Senator Bourget: Yes it does.

Mr. Macaulay: The act is intended to prohibit dumping in the sea and for the purposes of the act the sea is defined as those areas mentioned in clause 2(2)(a) to (g). Then in subsection 3 you find the areas which are exempted.

Senator McGrand: Perhaps I am a little late in asking the question I want to ask. I understand that Norway has signed this agreement.

Mr. Macaulay: Yes.

Senator McGrand: Now if a Norwegian ship pollutes Canadian waters, then I take it it is the Canadian authorities who will impose a penalty. But what about a ship from a country that has not signed this agreement, say a Liberian ship.

Mr. Willis: If a ship that has not ratified the convention were to dump without a permit in waters under Canadian jurisdiction, this act would provide that that ship or its master could be prosecuted.

The Chairman: Can you tell us how many nations have ratified the convention?

Mr. John R. Monteith (Chief, Hazardous Material Management, Environmental Protection Service, Department of the Environment): Thirteen have already ratified it.

The Chairman: And it requires 15 nations. So you are two short of the requirement.

Mr. Monteith: That is correct.

Senator Inman: What kind of things are dumped in the sea? What are the things that are most harmful when dumped in the ocean?

Senator Bourget: There is a schedule to the bill.

Senator Fournier (de Lanaudière): That was explained by Senator Macnaughton yesterday, but it was quite a short explanation.

Mr. Monteith: Mr. Chairman, the list of substances considered to be most harmful will be found in Schedule I on page 23 of the bill. The first group includes organohalogen compounds and that would include pesticides such as DDT, dieldrin and other persistent materials. The second group includes mercury and mercury compounds, and the third group, cadmium and cadmium compounds. Then in the fourth group you have persistent plastic and other persistent synthetic materials. The fifth group includes crude oil, fuel oil, heavy diesel oil and lubricating oils, hydraulic fluids and any mixtures containing any of them. Also in group number 4 you could have fishing nets which have been cast adrift and which could continue fishing and remain in suspension indefinitely. Then the sixth category includes high-level radioactive wastes and the Canadian policy is such that no radioactive wastes shall be dumped.

Senator Fournier (de Lanaudière): Is there something that provides for the implementation of this law during time of war? I know it is good for nothing, but in time of war you can have pollution of the waters by bacteria which would be quite a serious offence. It would never be observed, but I think it should be in the law.

Mr. Monteith: I shall refer that question to our legal adviser.

Mr. Willis: One of the substances designated under Schedule I as a prohibited substance is any substance under whatever form which is produced for chemical or biological warfare. There is no exception in the act for wartime or peacetime. We make no distinction.

Senator Fournier (de Lanaudière): It applies in either peacetime or wartime?

Mr. Willis: That is correct.

Senator Inman: Is there any restriction as to how much of this stuff can be dumped? I know that at times quite an amount of it is dumped.

Mr. Monteith: Mr. Chairman, Schedule I gives a list of prohibited substances, that is to say that there will be no dumping whatever of these substances except under very specific conditions. The dumping of these substances is prohibited.

Senator Neiman: Are the restricted substances under Schedule II items for which you might, under certain circumstances, issue permits?

Mr. Monteith: In very restricted conditions.

Senator Neiman: Carefully controlled conditions.

Mr. Monteith: Very carefully controlled conditions. Some of these items might eventually find their way into Schedule I. The Canadian position would probably be such, internationally, that we would want some of these items in Schedule I.

Senator Neiman: Were these items set out in the schedules agreed on at the London Convention, or are these divisions in accordance with the London Convention?

Mr. Monteith: At the moment this is directly quoted from the London Convention.

Senator Neiman: I wonder, Mr. Chairman, if, for the record, we could have the names of the countries that have already ratified?

Mr. Macaulay: Mr. Chairman, I can indicate to honourable senators that the countries that have already ratified are: Iceland, The Philippines, The United States of America, the Dominican Republic, Sweden, Norway, Spain, the United Arab Emirates, Denmark, Jordan, Mexico, New Zealand and Afghanistan. That totals a number of 13 countries.

The Chairman: France and West Germany are not there. The USSR is not there.

Senator Neiman: Great Britain is not there.

Mr. Macaulay: No, they are not. I believe several of the countries you mentioned could be in a position to ratify the convention at any time. For example, with regard to the United Kingdom, I do not know if I am correct in saying that they have at least considered a bill, or have brought forward a bill, dealing with ocean dumping, but I gather that it has not been passed by their legislative body.

Mr. Monteith: I think I can answer to some extent on the United Kingdom situation. As I understand it, the United Kingdom signed the convention as the government of the United Kingdom. Their bill has gone through the

house in the United Kingdom. However, as the government of the United Kingdom, they have to consider the parliaments in such places as the Isle of Man and the Channel Islands, and the bill has to go through these parliamentary seats in addition, before the convention can be ratified by the United Kingdom, as distinct from Great Britain.

Senator Neiman: May I ask about that strange conglomerate, the Liberian registry, and all the ships that seem to be registered under the Liberian flag? Is Liberia a signatory to the London Convention, so that the ships that are so registered can be controlled?

Mr. Willis: I am informed that the Liberian government has not ratified this convention. I have no information as to their intentions. The question of whether dumping practices by Liberian ships could be regulated, I think, goes back to some of the earlier questions asked by honourable senators. If the dumping took place in the waters under the jurisdiction of a country that had ratified, it would, of course, be caught by the various national statutes; but otherwise, the efficacy of the convention does depend upon ratifications.

Senator Macdonald: If the Liberian fellows dumped on the high seas, nobody could touch them?

Mr. Willis: No.

Mr. Monteith: I am looking at a copy of the convention at this time, and it is indicated here that Liberia has signed the convention. That is, they have indicated a desire to ratify the convention. They have signed it, but they have not yet ratified it. Some 80 odd countries signed with an intent, but they must have legislation in place so that they can issue permits and control dumping before they could be in a position to ratify the convention.

Senator McGrand: How are ships going to dispose of these waste materials? Are they going to let them accumulate until they come back to their home ports and dispose of them there? How is it going to be done?

Mr. Macaulay: I believe, Mr. Chairman, what we are addressing ourselves to in this bill is dumping which will normally be carried out following loading in some port. The bill does not address itself to such matters as disposal of, for example, residues of oil from tankers. This sort of thing is covered by other statutes, and other agreements.

Senator McGrand: Would it include sewage that accumulates on a ship?

Mr. Macaulay: I believe not, no.

Mr. Willis: The definition of dumping in this statute, which is inspired by the definition in the international convention, excludes operational discharges; that is, the discharges that arise out of the normal operation of the ship. That would include sewage, bilge discharge, tank washing, and so on. These matters are dealt with nationally under regulations under Part XX of the Canada Shipping Act, which was passed in 1970. Internationally they are being dealt with by various bodies in negotiations under the Intergovernmental Maritime Consultative Organization, and in November of 1973 there was a draft convention adopted in London to deal with the question of operational discharges.

Senator Fournier (de Lanaudière): In la belle province de Québec, with regard to meat, is it forbidden to throw such meat in the water?

Senator Bourget: I think it was Mr. Macaulay who said a few minutes ago that 81 nations have signed the agreement in London. When Senator Macnaughton was explaining the bill in the Senate he mentioned 91. Which is it? Is it 81 or 91?

Mr. Macaulay: I believe, Mr. Chairman, that the number of signatories was 82; but there were additional observer nations, and this may be what Senator Macnaughton was referring to in his speech.

Senator Norrie: In what common compounds do you find cadmium?

Mr. Macaulay: Cadmium is used very commonly as a plating compound, I believe. I do not know exactly which compound it is used in, but cadmium compounds in general are quite toxic to marine life, and for that reason are specified in the schedule.

Senator Norrie: Is it quite plentifully used?

Mr. Macaulay: I believe Mr. Monteith has something to say on that.

Mr. Monteith: Mr. Chairman and honourable senator, cadmium compounds are extensively used for plating in a number of industries. It is a corrosion preventive procedure. It is extensively used, for example, in the aircraft industry, and the aircraft maintenance industry.

Senator Inman: Mr. Chairman, with regard to those ships that belong to a certain country but are under charter to another country, how does the law affect them if they break any of these conditions? I am thinking of Liberian ships in particular, because on the east coast a lot of them come in under charter to Canadian firms.

Mr. Willis: The basic criterion that is used is that of registry, so one has to see whether the ship is registered in Liberia, or registered elsewhere, regardless of the principals who are actually running the ship, and regardless of what charter arrangement may have been entered into. I would reiterate, however, that any dumping by any ship, regardless of charter arrangements, and regardless of flag or registry, would be covered in Canadian waters by our statute.

Senator Macdonald: Would that come under the definition of "owner", on page 2?

Mr. Willis: Yes. Thank you, senator.

Senator Neiman: Mr. Chairman, could you not catch people—Canadians, for example,—who use a foreign charter to get around this, by including in the bill operators, or charterers, or whatever the proper term is, as well as owners of vessels?

Senator Macdonald: "Owners" is a wide definition, though.

Mr. Willis: One of the honourable senators pointed to the definition of "owner" on page 2 of the act, which I had overlooked in my earlier reply. This is taken from other Canadian legislation, and is quite extensive.

Senator Neiman: That gives you a wider range.

Mr. Willis: Yes.

Senator Neiman: I wonder, Mr. Chairman, if this gentleman could give us an idea if, say, any Canadian vessels

would be offenders by definition under this act, because of their present practices? Do we have much of this type of dumping going on in Canadian waters today?

Mr. Monteith: Mr. Chairman and honourable senators, the dumping that is going on today is essentially dredge spoil material dumping or dredge material dumping. There are one or two instances of dumping of other materials, other than dredge spoil. To say whether it would be an offence—it would be an offence if they did not have a permit to dump, once the act is in force, and the conditions under which they get the dumping permit, and the materials they were dumping would have to be carefully considered at the time.

Senator Neiman: To your knowledge, you do not know of any vessels practising dumping that would be offenders under Schedules I and II?

Mr. Monteith: No, not under Schedules I and II.

Senator Bourget: Is this bill being brought into effect for offences in the provinces or are they concerned at all?

Mr. Macaulay: Yes, Mr. Chairman, the provinces were consulted at the drafting stage and they are aware of the contents of the bill and we have been in contact with them throughout the procedure. We intend to continue our contacts with them, in administering the act.

Senator Fournier (de Lanaudière): You do not need a ratification from the provinces.

Mr. Macaulay: No. That is correct.

The Chairman: Is it not so that the key word in this is not "dumping" but "deliberate dumping". You would have to prove that the dumping was deliberate, to get a judgment against them?

Mr. Macaulay: I believe Mr. Willis would like to make a comment on your question, Mr. Chairman.

Mr. Willis: Thank you, Mr. Chairman. Yes, I would confirm that the word "deliberate" appears in the definition of dumping. It is a very important word and it is meant to distinguish the kind of activity which we are regulating here, which is intentional disposal, from the kinds of activity which we regulate under the Canada Shipping Act which would include operational discharge and accidents.

The Chairman: So to get a judgment against an alleged offender you would have to prove that he dumped and that he deliberately did so.

Senator Macdonald: There are checks in clause 17 about proving the offence. They shift the burden of proof onto the accused.

Mr. Willis: Clause 17 deals with the responsibility or the liability of the employer or the master; but there would still be a requirement to prove that the actual occurrence of dumping was not an accident, that it was intentional.

The Chairman: There was a case reported in the press not too long ago. I am not sure that I remember the complete details. I believe it was an American naval ship, where the commander admitted that he had dumped a considerable amount of oil in the ocean because it was cheaper to do that than to bring it in and dispose of it on shore. Are you familiar with that? Where would a case like that fit under this legislation?

Mr. Willis: I believe I can answer that question, Mr. Chairman. This type of dumping or disposal would be covered by the legislation we are considering today.

The Chairman: But only because he admitted that he had done it? Suppose that no one saw him and he did not admit it?

Mr. Willis: That goes to the problem of detection.

The Chairman: If the facts of the case are as I stated, that was on the high seas, not in any territorial waters?

Mr. Monteith: Yes, Mr. Chairman. If this was the United States aircraft carrier which had on board as well as aviation fuel for turbo props, some gasoline type fuel for the smaller aircraft, the non-military type aircraft. When they come into port they have a very difficult and time-consuming procedure because of the operation. So rather than go through the operation it is usual to use their own authority and they ocean dump the gasoline. That was the basis.

The Chairman: But it would be an offence under this legislation if he admitted he had done it or if it were proved he had done it?

Mr. Monteith: That is correct.

Mr. Macaulay: That is, if he had done it without a permit to do so.

The Chairman: Yes. Senator Macdonald, you raised the question of burden of proof?

Senator Macdonald: Yes, I do not like the shifting of the burden of proof. I do not like that kind of thing. But it does not apply to the question raised.

Senator Bourget: Clause 14(7), on page 11, says:

Subsection 450(5) of the Canada Shipping Act is not to be construed so as to relieve any person from any liability under this Act.

What does subsection 450(5) of the Canada Shipping Act do?

Mr. Willis: I believe I can answer the honourable senator's question. Section 450 of the Canada Shipping Act deals with regulations on the carriage of dangerous goods or hazardous goods. It describes the regulations to enforce methods of packaging, stowing and loading and it allows the master to dump dangerous goods overboard if they have been packaged or loaded or otherwise dealt with in violation of these regulations. We want to make sure that no ship would be able to escape liability by reason of the subsection which has been on the statute books for a number of years. The only escape clause we have therefore inserted is in clause 8, which deals with safety to life at sea.

Senator Bourget: Thank you.

Senator Fournier (de Lanaudière): Suppose a bomb was put on a ship and it was discovered and of course they had to get rid of it, what would happen?

Mr. Macaulay: I believe that would be a legitimate use of the emergency powers described in the section.

Senator Neiman: I hope so.

The Chairman: You mentioned that provision is made for permits. Would you give a little more detail on the permits? What do you have to do? Take the case of this naval aircraft we were talking about earlier. If he did not want to break the law, he wanted to keep within the International Convention, what should he have done? Just what process or procedure would have been open to him?

Mr. Macaulay: Basically the gentleman in question should not have carried out the dumping without a permit—if we suppose that this legislation has come into force. In clause 9(1) there is an indication that the minister may grant a permit subsequent to receipt of an application in prescribed form. One of the things we will take up immediately, under the regulations under the statute, will be the prescription of the form of application.

The Chairman: Where does he get this? At the customs office?

Mr. Macaulay: No. He will be instructed to write to a regional office of the Environmental Protection Service, Department of the Environment.

Senator Neiman: I am still concerned about the application and the enforcement of this proposed act as regards jurisdiction. For instance, you have set out certain criteria here of circumstances under which a permit may be granted. What if another signatory has an entirely different set of criteria or interprets it in a different way? For instance, if another signatory were to issue a permit under those circumstances but it is a type under which you or another signatory would not, how are you going to resolve this difference?

Mr. Macaulay: I think I can answer that by saying it is very possible that other ratifying countries will issue permits in circumstances which would be unacceptable in Canadian waters, but this would be as a consequence of local differences in marine environment. For example if the country was in a very warm climate, they might have requirements quite different from those we might wish to exercise in the Arctic.

Senator Neiman: You are referring solely to international waters, but I am talking about the common international high seas.

Mr. Macaulay: Yes, the international convention addresses itself to this question. It indicates that the international organization should set up a scientific body to deal with the establishment of criteria which are internationally acceptable.

The Chairman: Would you go on to tell us a little more about procedure? The person has come to the office of the environment to apply for a permit. Then what?

Mr. Monteith: The application must contain a variety of information including a detailed description of the nature of the waste, the chemical, physical, biological and biochemical properties of the material to be disposed of. In addition, the application will require that the location of disposal be noted. It will require that we be advised of the source of the waste so that we can evaluate the statements on physical and chemical properties, et cetera. It will require information on the routing, on the dates, on the quantities and on the concentrations of contaminants in the waste. Then at that stage it will be evaluated by the appropriate scientific authorities, such as oceanographers, fisheries management people, the environmental protec-

tion service and the appropriate provincial people, because consideration must be given to alternative disposal methods. The application will, moreover, be reviewed by other governmental departments as required. For example, if the waste included radioactive material, or was suspected of including radioactive materials, then the Atomic Energy people would become involved immediately. All that would take place prior to the granting of a permit.

Before the permit is granted the scientific authorities will set up the conditions under which the disposal is to take place. This involves a knowledge of weather conditions, the rate of disposal, the rate of discharge, the mixing which must be required and the location. Of course, all of this is to protect the resources of the ocean and the physical amenities and health of humans.

The Chairman: This applies only to waste that has been accumulated on land over a period of time. What of the disposal of waste which accumulates on ships?

Mr. Monteith: The operational waste as generated on a ship in Canadian waters is covered by various sections of the Canada Shipping Act. The operational wastes on the high seas are covered under a variety of treaties and organizations such as IMCO, the International Maritime Consultative Organization. This act does not cover ship-generated wastes.

The Chairman: Does it cover wastes which develop from cargoes?

Mr. Monteith: If the waste develops from the normal operation of a ship it is not covered. If it develops from the abnormal operation of a ship, then it would be covered.

The Chairman: So it envisages only wastes accumulated on land and disposed of at sea by ship or aircraft.

Mr. Monteith: Yes, if you include dredged materials as wastes accumulated on land.

The Chairman: If it includes dredged materials, would a contractor for dredging need to obtain a permit to discharge his dredged materials in the ocean?

Mr. Monteith: That is correct.

The Chairman: The procedure you have outlined would take several weeks at the least.

Mr. Monteith: It might, yes.

The Chairman: After which someone would then have to inspect the dredged material in order to okay it for dumping.

Mr. Monteith: You realize that dredged materials can be quite hazardous to the ocean, particularly dredged materials from harbours located in heavily industrialized areas. Such dredged materials may well contain hazardous materials like cadmium. We must therefore look carefully at where these dredged materials are disposed of.

Senator Neiman: Does the government intend to institute any positive method of surveillance in order to enforce this law? Will we depend on Canadian ships at sea to report infractions?

Mr. Macaulay: In general it is not our intent to set up a separate policing organization. We certainly intend to use the various measures at our disposal within the government, which would include the ships attached to this

department—for example, the oceanographic vessels, and the ships which are attached to the fisheries inspection service. We would also envisage asking for the help of MOT captains, the RCMP and other federal government departments which conduct operations within the marine environment.

Senator Fournier (de Lanaudière): The coastguard would be another.

Mr. Macaulay: Yes.

Senator Neiman: I saw a report in the paper to the effect that the Ministry of the Environment had ordered two new ships. Is that true? If so, are they to be used in this type of work?

Mr. Macaulay: The department has an on-going ship acquisition program. I am not sure to which ships the honourable senator is referring.

Senator Neiman: The news report made it sound as if the ships could be used for some type of surveillance work. I just wondered if there was a connection with this proposed law.

Mr. Macaulay: I am not aware of the particular vessels to which the honourable senator refers.

The Chairman: I am a little confused. A while ago when I mentioned the example of an aircraft dumping high octane gas into the sea I thought the answer was that it would be an offence under this legislation. Now I get the impression that it would not be an offence under this legislation, although it probably would under some other piece of legislation.

Mr. Willis: Mr. Chairman, in a case such as dumping high octane aviation gas at sea, it would be impossible, in my opinion, to argue that that was excluded from the ambit of this bill in reference to the normal operations of a ship. Therefore, there is no doubt that it would be covered by this bill. What would be excluded from the ambit of the bill is the kind of operational discharge which arises out of the ordinary operation of a cargo ship or tanker; for example, washings or discharge of oily fills or sewage.

Senator Neiman: By definition could you bring that under No. 5 of Schedule I? I do not think so.

Mr. Monteith: Any dumping requires a permit, senator, so it does not have to be under one of the schedules. The person would have to have a permit to dump regardless of whether it was under Schedule II or otherwise. All dumping of materials requires permits.

Senator Neiman: In any case, the example the Chairman cited does not come within that particular definition.

Mr. Monteith: No, it is not covered in No. 5. That is correct.

Senator Bourget: Mr. Chairman, on page 4 of the bill, clause 7(1) says that:

No person shall dispose of any ship, . . .

and so on. The French translation reads:

Il est interdit d'abandonner en mer un navire, . . .

I do not think the word "dispose" means exactly what it says in French. "Dispose" here does not mean "abandonner". You can leave a ship without disposing of it. Should we say instead of "abandonner", "Il est interdit d'immerger

er...”? That is in clause 7(1). In English it says, “No person shall dispose of any ship...” and in French it says, “Il est interdit d’abandonner...”. Now you can “abandonner” or abandon a ship without disposing of it. So the translation of the word “dispose” is given here as “abandonner” and I do not think the word “dispose” in that context has the same meaning as “abandonner”. As a matter of fact in clause 6 they translate the word “dispose” by “rejeter” and that makes better sense, but in this case, “dispose” and “abandonner” do not have the same meaning. You may “abandonner un bateau” without disposing of it.

Senator Fournier (de Lanaudière): You are right, because you can “dispose” in many ways but you can only “abandonner” in one way.

Senator Bourget: I am not a lawyer, but it seemed to me when I was reading the bill last night that there is quite a difference. To “dispose” would mean to dump or to sink a ship, but to “abandon” which is a literal translation of the word “abandonner” does not have the same meaning.

Senator Neiman: All we have to do, Mr. Chairman, is to report the bill with a minor technical amendment, because that is all it is. It will be no problem at all. But I think Senator Bourget is quite right and I think it should be done.

The Chairman: Mr. Macaulay wonders if we could do this in the Senate after we report the bill.

Senator Neiman: When we report the bill we should report it with that amendment.

The Chairman: Yes, I think we would have to do it here.

Senator Fournier (de Lanaudière): I think it is the English text that should be amended.

Senator Bourget: No, not exactly. We are talking about the dumping of waste, and here in using “abandonner” we may leave the ship on the water and not sink it or dump it. But in French “abandonner” means to leave it alone. So, “dispose” to my mind should not be translated by the word “abandonner”. As a matter of fact, as I have said before, in clause 6 it says in English, “No person shall dispose...” and it is translated as “Il est interdit de rejeter...”. But then you have the word “dispose” in clause 7 and you translate it by the word “abandonner”. To my mind there is a difference.

Senator Fournier (de Lanaudière): I still think that it is the English text that should be amended. I shall tell you why I say that; take the big ships like the *Michaelangelo* or the *Queen Mary* or the *France* that are disposed of in a particular way. They may be used as a hotel or as a casino, but they will not be “abandonné”.

The Chairman: I would think this is meant to apply to derelicts. It applies to taking ships out to sea and perhaps sinking them or leaving them as menaces to shipping and navigation and that sort of thing. I think that is what is meant by “disposal”.

Senator Bourget: That is what I thought. I thought that by “disposal” you meant sinking a ship or something like that.

The Chairman: Because we have the English term “abandon ship” which means that the ship is going to sink so we leave it.

Senator Bourget: If you use in French the word “abandonner” it does not have the same meaning. So to my mind, and I am no expert, it should be changed. It is only a minor amendment.

Senator Neiman: Mr. Chairman, I move that we make the amendment.

The Chairman: Do you have an alternate wording for it?

Senator Neiman: Yes, substitute the word “rejeter” for “abandonner” as shown in clause 6.

Senator Bourget: Then it will fit in with clause 6 where you translate the word “dispose” by “rejeter”. I think it would be the better translation to use.

The Chairman: Perhaps we can hold this in abeyance for a moment while our witnesses consult with the Department of Justice.

Senator Bourget: I do not want to create any difficulties, but I thought this should be brought to the committee because to my mind as it stands now it does not have the same signification in French as it does in English.

Senator Denis: And why have the French word “rejeter” which means “to dispose again”? Why not have simply “jeter” instead of “rejeter”? Because “rejeter” means to do it twice.

Senator Neiman: Perhaps in clause 6 as well as in clause 7 the word should be “jeter”.

Mr. Macaulay: We will take that under advisement, Mr. Chairman. We can ask the people in the Department of Justice how they feel about the word “jeter” as opposed to “rejeter”.

The Chairman: We can deal with other aspects of the bill in the meantime. Do you have some more general questions? Do you want to proceed with the bill clause by clause?

Hon. Senators: No.

Senator Bourget: I shall move that with the appropriate amendments made the bill should carry.

The Chairman: Well we have an amendment before the house from Senator Neiman.

Senator Neiman: I am holding that for the moment, Mr. Chairman, because I would be prepared to withdraw it to make an amendment which would cover both clauses 6 and 7.

The Chairman: Yes, you would have to have two amendments, one to cover clause 6 and one to cover clause 7.

Senator Bourget: Perhaps we could leave it to the officials of the department to draft an amendment according to the English version so that it will mean exactly the same in French.

The Chairman: Well, one of our witnesses is telephoning the Department of Justice now, and he may be able to get a reply in a short while. Does the permit cover only territorial waters, or does it cover the high seas?

Mr. Macaulay: The permit, Mr. Chairman, would cover any area of the seas referred to in subsection 2(2).

The Chairman: It reads as follows:

- (a) the territorial sea of Canada;
- (b) the internal waters of Canada other than inland waters;

And so on.

- (d) the arctic waters within the meaning of the *Arctic Waters Pollution Prevention Act*;

And then we have

- (g) any area of the sea, other than the internal waters of a foreign state, not included in the areas of the sea referred to in paragraphs (a) to (f).

Does that mean that Canada could give a permit to dump in the waters under the jurisdiction of the United States, for example?

Mr. Macaulay: The only exclusion, Mr. Chairman, is the internal waters of a foreign state, which is to say, the waters inside that state's base line.

Senator Macdonald: What about those states who claim a 200 mile jurisdiction?

Mr. Macaulay: I believe that the exclusion is to the waters inside their base lines, as opposed to any other lines which they may draw.

Senator Fournier (de Lanaudière): What about the English word "abandon"? That would correspond to the French word "abandonner".

Senator Bourget: I think what the lawmaker had in mind when he used the word "dispose" was that he wanted to "send" the ship or the aircraft. In French, the usual word would be "se débarrasser", but "to abandon" is something different. You can abandon a ship on the sea and it will float, but that does not mean "to dispose of".

The Chairman: It does not mean it is disposed of.

Senator Bourget: Yes. That is the reason I would like to find a more exact word to replace the French word in clause 7, "abandonner".

Mr. Macaulay: I believe, Mr. Chairman, if we get into the use of the word "abandon" in English, the connotation might be that of abandoning a ship in time of distress. When the captain gives an order to abandon ship, it does not necessarily imply that the ship will be sunk at that spot.

Senator Macdonald: That is true.

Senator Neiman: Mr. Chairman, here is Mr. du Plessis. Perhaps he could help.

The Chairman: When you say in the English version of clause 7, "no person shall dispose of any ship, aircraft, platform or other man-made structure", what you really mean is that no person "shall sink" any ship or aircraft, et cetera. That is what you mean.

Senator Bourget: "Disposer" in French means that also. It means "se débarrasser", which means "to get rid of"; but the word "abandonner" does not have the same meaning.

Senator Neiman: Do you have a word comparable to "disposal"?

Senator Bourget: "Disposer", yes. But it has not got exactly the meaning of "dispose" in English. It is funny. It has about the same pronunciation—"disposer" and "dispose"—but in French the word "disposer" has not got

exactly the same meaning. You can dispose of a thing, which means you can put it over there; but in this case I think that what the draftsmen of that bill had in mind, or what the committee of the cabinet had in mind, was "dispose", meaning "destroy"; here, in that case, "get rid of" means that, but "abandonner" does not mean "get rid of". "Abandonner quelqu'un", "to abandon somebody", means "to leave them alone"; but it does not mean that we should dispose of it. My trouble here is to find exactly the word that will give the same meaning, in French, as you have in English when you use the word "dispose".

Mr. Macaulay: Well, perhaps Mr. Willis will be able to determine what an appropriate word will be, in consultation with the department.

Senator Bourget: It is not a major correction, but I think it has some importance.

Senator Fournier (de Lanaudière): There is a shade in the meaning.

Senator Bourget: Yes, and an important shade, with regard to the meaning of the word "abandonner", compared to the word "dispose" in English. I wonder if Mr. du Plessis, who is an expert, and has corrected me many times, could help.

Mr. R. L. du Plessis (Legal Adviser to the Committee): This is the French language that we are dealing with and I am not an expert in that language. I am sure the people in the Department of Justice have given it a lot of thought, and will be able to explain the difference in the use of the word "rejeter" in clause 6, and the word "abandonner" in clause 7.

Senator Bourget: Yes. You see, in clause 6 they use the word "rejeter", and in clause 7 they use the word "abandonner", so there is a difference. I wonder if there are any experts in the back there. Have you got a word? "larguer"?

Senator Fournier (de Lanaudière): Not "larguer".

Senator Bourget: I am sorry to delay the work of the committee, but I thought it had some importance.

The Chairman: Well, that is why we have committees.

Senator Bourget: Yes, exactly. Unfortunately, there are no experts here. "Larguer"? No. You speak of "larguer les amarres". No. "Larguer" would not do.

Senator Denis: "Caler"?

Senator Fournier (de Lanaudière): "Immerger"?

Senator Bourget: "Immerger". "Immerger en mer"? The word "immersion" is used in the French translation in clause 4. I think "immerger" would be the right word.

Mr. Macaulay: The reason we have not used "immersion" in French, in clause 6, at any rate, is because it would correspond with the use of the word "dumping" in English, and we have been careful to distinguish here. We have been careful to use, in clause 6 and clause 7, the word "disposal", as opposed to the word "dumping".

The Chairman: You do not dump a ship.

Mr. Macaulay: No.

Senator Fournier (de Lanaudière): Who knows the English translation for the French word "épave"?

The Chairman: I am informed by the clerk of the committee that the word is "derelict".

Senator Bourget: "Derelict"?

The Chairman: Yes. A ship that has been abandoned at sea and is just a menace to navigation.

Senator Inman: Just floating around.

Senator Bourget: Mr. Macaulay raised a point there that interested me. You said you were very careful to say "abandon" or "dispose", but I think the word "dispose" there means "to get rid of." Perhaps I am wrong. If I am wrong, we will not have to change the word "abandonner"; but instead of saying "no person shall dispose of any ship," and so on, you could say, "no person shall abandon".

Senator Macdonald: That would not cover it.

Senator Denis: I think the spirit of the law is to cure pollution. Is that not correct?

Senator Bourget: To avoid pollution.

Senator Denis: To avoid pollution. Is that the spirit of the law?

Mr. Macaulay: Yes.

Senator Denis: But if it does not go into the water, there is no pollution. I think the word "dumping" is the right word, and it should be used throughout the bill.

Mr. Macaulay: Mr. Chairman, the word "dumping", I believe, was not used in clause 6 because one does not normally speak in English of dumping a ship. One would normally consider that the act of disposing of a ship at sea would not quite conform to what is understood by "dumping".

Senator Denis: The spirit of the law is in the title. *«L'immersion en mer de déchets et substances diverses»*. That is the spirit of the law.

Senator Fournier (de Lanaudière): So it is "immerger".

Senator Denis: It has to be something put into the water, not on top.

Senator Bourget: It has to be "sink". That is the way I understand it. The word "abandonner" is there, and does not mean exactly what you are saying in English. I am sorry to repeat myself, but I think that is the crux of the question, unless the person who drafted that bill had something else in mind.

The Chairman: We are quite clear that what we mean by "dispose" is sinking a ship, getting rid of it.

Mr. Macaulay: I believe that in everyday usage "getting rid of a ship" is perhaps the connotation we are looking for here. It does not necessarily imply sinking.

Senator Fournier (de Lanaudière): "Immerger".

Senator Bourget: That is not what it says.

The Chairman: I do not know how you get rid of a ship without sinking it. How can you get rid of a ship at sea without sinking it?

Mr. Macaulay: You could, for example, cast a ship adrift at sea.

Senator Macdonald: That would be abandoning it.

The Chairman: Is that what you mean by "dispose"?

Mr. Macaulay: Some people might dispose of a ship at sea by abandoning it. I think that is a possibility.

The Chairman: Is that the intent of this clause?

Mr. Willis: I am not a linguistic expert, so I cannot reply on my own behalf. I have, however, consulted with the chief translator at the Department of Justice and with some of his colleagues. What we are talking about in clause 4 is scuttling, and they confirm that the best word that could be found in French is "abandonner." They considered a number of other alternatives, which they refer to as "false friends," as being superficially in accordance with the English text, but the most accurate term, they say, is "abandonner."

Senator Langlois: If you want to translate "scuttle" into French it is "saborder."

Senator Bourget: That is quite different.

Senator Langlois: You do not have the same meaning in both the English and French texts. "Dispose" and "abandonner" are not the same thing. "Saborder" is the word if you mean to scuttle. To scuttle a ship or an aircraft needs the word "saborder."

Mr. du Plessis: Do you wish to change the English to "scuttle"?

Senator Langlois: If that is what you have in mind you should say so in English and in French.

Mr. du Plessis: In English the word "dispose" is broader than "scuttle." In the context it would seem preferable to have a slightly broader word.

Senator Langlois: You cannot dispose without scuttling, of course.

Mr. Macaulay: I think this is probably the intent of the clause.

Senator Fournier (de Lanaudière): That is what I said. A ship can be put to another use, such as making a hotel or a casino out of it.

Senator Bourget: It all depends on what the draftsman or the committee had in mind in using the word "dispose." As I read it there, "dispose" should not be translated by "abandonner." Perhaps I am wrong, if you say you have consulted the experts and the lawyers. That is what the lawyers should have in mind, not only the translators.

Senator Langlois: In marine law you have the verb "to abandon" a ship; you abandon the ship if you figure the ship is a total loss. It does not mean you are scuttling the ship. You are merely abandoning the property of the ship to the underwriters.

Mr. Willis: The people I consulted are linguists and also lawyers. Their advice is that there is no literal correspondence between the word "dispose" in English and "disposer" in French, or on the other hand, conversely, between "abandonner" in French and "abandon" in English. There are subtle difference between the meanings of the words.

The Chairman: Senator Langlois is a celebrated marine lawyer.

Senator Bourget: The word "dispose" is translated by "rejeter" in clause 6.

Senator Neiman: How do they explain that? They use two different words in different clauses. It does not make sense.

Senator Bourget: In clause 6 the word "dispose" is translated by the word "rejeter." However, in clause 7 the word "dispose" is translated by the word "abandonner."

Senator Neiman: That does not make sense.

Mr. Willis: I think the apparent difference there is perhaps a matter of context. In clause 6 they are talking about disposal on ice, which is a different basic concept from the idea of disposing of a ship at sea.

Senator Langlois: I read the French text to mean that the master of a ship could not order his crew to abandon his ship at sea without getting a permit for it. You could not get a permit in a storm in mid-ocean.

Mr. Macaulay: On that point, clause 8 is quite clear in that where there is danger to a vessel or to a human life at sea the master is quite within his rights to abandon the ship or dump the cargo; this legislation contemplates dumping the cargo.

The Chairman: I think what you really mean is scuttling a ship, or taking it out and sinking it. That is the only way you can dispose of it at sea.

Senator Fournier (de Lanaudière): That is "saborder."

Mr. du Plessis: If that is the case, then we de-limit the meaning of the clause in English if we change it to "scuttle."

Senator Neiman: It is good English.

The Chairman: If you use "scuttle," you do not scuttle an aircraft. "Dispose" would apply to an aircraft.

Mr. du Plessis: It is certainly a broader term.

The Chairman: As far as it applies to a ship it means scuttling, but it is sinking the others, although it means sinking a ship too.

Senator Fournier (de Lanaudière): "Immerger."

Senator Macdonald: Does not "scuttling" mean "sinking"? This is broader. Suppose a ship were on fire, the fire went out by itself and the ship was still wandering around the sea abandoned?

Senator Langlois: I think the word "dispose" is really too broad. You can dispose of a ship by selling it to a third party. That does not mean you abandon it if you do that.

The Chairman: You would have to say "scuttle" for a ship and "dispose" for the others.

Mr. Willis: I think I would agree with the point just raised, that if we use "scuttle" it is used in the narrower sense, it would de-limit the application of the clause. Certainly we do not intend to limit the application to cases where the ship is sunk. With respect to the point raised by Senator Langlois, I think the verb "dispose" is not too broad, because we are talking about disposing at sea, so certainly transferring the ship to a third party would not be covered by the bill.

Senator Langlois: You can do that at sea too.

The Chairman: That is another angle. You could dispose of it by taking it to sea and turning it over to somebody else.

Senator Bourget: For an aircraft or a ship "couler le bateau."

Mr. Macaulay: On that last point, I believe the whole purpose of the legislation is to regulate dumping at sea or the disposal of substances at sea. The legislation does not really contemplate relations between two parties involving the transfer of property.

Senator Langlois: You have a different word for both sections. You should make up your minds about what you want.

Mr. Willis: If I might reply, the difference between the verb used in section 6 and that used in section 7 is a matter of context. One verb is "rejeter," which is correct when talking about disposing of things on ice. Another verb, for linguistic reasons, is correct when talking about ships. There are differences in the French which would not be apparent if we used the exact corresponding terms.

Senator Fournier (de Lanaudière): I like the verb "couler".

Senator Denis: Faire s'enfoncer dans l'eau.

Senator Bourget: Taking the case of ships or aircraft, if we want to dispose of them we sink the ship or aircraft. The word "couler" in French, I take it, would cover that.

Senator Denis: "D'abandonner".

Senator Bourget: I think the word "couler" would be a better translation of what is meant under section 7.

Mr. Willis: "Couler" would mean sinking.

Senator Bourget: Yes.

Senator Fournier (de Lanaudière): Perhaps you could call your department and have the word changed to "couler".

Mr. Willis: The intention is not to limit the expression in the section to cases of sinking.

Senator Bourget: Then that is different.

The Chairman: Another word might be "rejeter"—getting rid of it.

Senator Fournier (de Lanaudière): For a ship?

Senator Bourget: Could not the word "saborder" be used there?

Senator Denis: To make a hole under the "ligne de flotaison".

Senator Fournier (de Lanaudière): The floating line.

Senator Denis: —So that the ship will go to the bottom of the ocean.

Senator Bourget: It all depends on what the draftsman had in mind.

The Chairman: Perhaps Mr. Willis could tell us what they had in mind, apart from sinking the ship. How else do you think it could be disposed of?

Mr. Willis: Certainly the normal means would be by sinking. But we would want it to regulate a simple case where they abandoned a ship at sea without bothering to scuttle it. We would want that to be covered.

Senator Macdonald: Why not take the crew off and let the ship go—abandon it?

Senator Langlois: There is an equivalent in French which might satisfy the drafters of the bill. It is "délaisser."—"Délaisser un navire en mer."

Senator Fournier (de Lanaudière): To leave it there—to get out of it.

Senator Denis: To leave it alone. But it does not necessarily sink.

Senator Langlois: Quit the ship and let it float as a derelict.

Senator Bourget: The bill has to do with dumping of waste, pollution. If you leave the ship there, it has no connection with pollution or dumping of waste. That is the reason why, when I read this last night, I felt the translation did not have the same meaning.

Senator Denis: It would not affect the pollution.

Senator Fournier (de Lanaudière): When you abandon the ship, it is left afloat. So there is no pollution.

Senator Bourget: But it could happen.

Senator Langlois: Fuel could seep out of the tanks. You would then have pollution.

Senator Bourget: It might or might not happen. Let us not take all morning about this.

Senator Fournier (de Lanaudière): Among the French-speaking members of the committee there would be no end to this discussion.

Senator Bourget: Let us leave the matter with the three witnesses and the one who drafted the bill to find the exact word. In the meantime we could move an amendment but not mention the word until the exact word, which gives the correct interpretation of the word "dispose," is found.

The Chairman: Is the committee rejecting this word "abandonner." Are we seeking a substitute?

Senator Bourget: Not us. We leave it to you, Mr. Chairman, or to the witnesses and the drafter of the bill, to find out exactly what he had in mind. Then, Mr. Chairman, you could get in touch with the experts in translation and find out whether the meaning agrees with the English word "dispose."

Senator Fournier (de Lanaudière): We would have to convene again.

The Chairman: We could not pass the bill.

Senator Bourget: Perhaps we could return at a quarter to two. It should not take up much time.

The Chairman: Will you be able to be present, Senator Langlois? I would like to have your views.

Senator Langlois: I am not a member of the committee, Mr. Chairman, and I will not be available at that time. I suggest that the word "délaisser" would mean the same thing without going too far.

Senator Bourget: If we use the French word "délaisser," we would have to change the English word "dispose." It does not mean the same thing.

Senator Langlois: It is much broader.

Senator Bourget: But it does not convey the exact meaning.

Senator Macdonald: Mr. Chairman, might I suggest that the discussion be brought to the attention of the draftsman and the translators, and that we have a report? We do not need to meet this afternoon. There is no rush about the bill.

Senator Bourget: If we could meet for about 15 minutes, we could dispose of the bill.

Senator Fournier (de Lanaudière): If we bring down an amendment, the bill would have to go back to the Commons.

Senator Langlois: Perhaps we could postpone this matter until next week.

The Chairman: It is a small matter. Is the committee prepared to move the rest of the bill?

Hon. Senators: Yes.

The Chairman: With the exception of sections 6 and 7.

Senator Denis: Not necessarily. If that word is changed, it might have to be changed in other sections.

Senator Neiman: Yes. The word appears in other sections.

Senator Fournier (de Lanaudière): Let us leave it to the experts.

The Chairman: We shall meet at the call of the Chair at approximately a quarter to two. If the matter is not resolved, we shall again adjourn.

The committee adjourned.

The committee resumed at 1.45 p.m.

The Chairman: Honourable senators, I am very sorry, I was delayed a bit.

Senator Bourget: Did you "dispose" of your guests?

The Chairman: I "abandoned" them!

Honourable senators, we have with us today Mr. Geoffrion, Mr. Covacs and Mr. Popp from the Department of Justice.

Mr. R. L. Geoffrion (Legislation Section, Department of Justice): Mr. Chairman and honourable senators, Mr. Covacs is chief translator and a linguist.

Mr. A. Covacs (Chief, Translation Bureau (Justice)): Mr. Chairman, I am Chief Translator. I am from the Department of the Secretary of State but am now working with the Department of Justice.

Le sénateur Bourget: Vous pouvez vous exprimer en français, vous savez.

M. Covacs: Très bien.

The Chairman: We had some translation difficulties this morning. It resolves around the meaning of the word "dispose". What did you mean by "disposing of a ship" or "disposing of a substance" in clauses 6 and 7? The word "dispose" has many meanings. It has several meanings in English and it is very difficult to apply them all to a ship. Senator Bourget and other discovered that the French translation was somewhat different, that it had a somewhat different meaning to the word "abandonner" which is not the meaning of the word "dispose" in French.

[Translation]

Mr. Geoffrion: Mr. Chairman, since it is a problem of translation and interpretation, I believe I will perhaps leave Mr. Covacs establish the nuances, if any, and explain why the word "rejeter" was used in one place, but "abandonner" used in another.

Mr. Covacs: The problem you are raising concerning the translation of this text, is that from the beginning and at a first stage, we had the English word "dumping", used in the meaning of "rejeter", to get rid of something, that was mostly considered as waste.

In the International Agreement on which the English text is based, the French version had the word "immersion". They have tried to keep the word "immersion" in most cases, but they have been faced with impossible translations like "immerger" wastes on the ice and "immerger" a ship. This was not adequate either. Then, according to the circumstances, they had to adapt different French words.

Subsequently, the word was deleted in the English text, that is to say they have not used the expression "dumping on ice" but they have spoken of "disposal" in those cases. From the beginning, the very definition of "dumping", and this proposition affecting the ice and the ships, has disappeared and the word "disposal" appears here, without any definition, which then allows us to use the words which according to the context will be thought adequate in French.

Now, in the first case, "disposal of any substance", they have taken the most generic term which is normally used in French, namely "se débarrasser de quelque chose", and which has a connotation of refuse, waste, and it is the verb "rejeter" and the corresponding noun "rejet". Then, we started from there.

Then subsequently we came to ships and planes, it was the language used in the International Agreement. I mean to say that the International Agreement used the word "scuttling", for man-made structure at sea. Now, it was difficult to use this word, then they discovered that even the French used in the International Agreement was not very adequate, concerning a platform, aircraft, etc., and there was no evidence that they really had to be sunk and they might very well, in a general sense, simply leave them there deliberately. It is for this reason we have chosen the word "abandonner", which seems to have a more general meaning.

Senator Denis: According to the title of the bill, it was to prevent pollution.

Mr. Covacs: Yes.

Senator Denis: You agree that the bill is designed to prevent pollution?

Mr. Covacs: Yes.

Senator Denis: If a ship is afloat, it is abandoned and is floating on the water, does it not pollute the sea?

Mr. Covacs: One could say so, if there are many of them.

Senator Denis: But they could be sunk or scuttled?

Mr. Geoffrion: If I may, in this case we should consider the English word, "dispose".

Senator Denis: Nothing shows that the word "dispose" is adequate. If they have made a mistake in another international law, or otherwise, you are not compelled to follow them.

Mr. Geoffrion: Then, we would have to start from the other text, in that case.

[Text]

The Chairman: I think the problem is that even the English word "dispose" is not the best word. The English word "dispose" could be used to mean to sell a boat, and this could actually happen.

Senator Bourget: Yes, it happened on the ocean where a ship was sold and it changed its name, right on the ocean. They did not know what the ship was, because the name changed, right on the middle of the ocean, and this is going before the Supreme Court next week. They changed the name. I agree with what this gentleman says, but we have to look at the two words, the English word first, because I have no objection to the use of the word "abandonner." I have no objection because it is related to "dispose". One of the two is wrong. Looking at the word of the law, the word as it is there, appears in clause 7. It does not have the meaning "abandonner" because if you wish to dispose of any ship I do not think that we could translate the word "dispose" in clause 7 by the word "abandonner." That is the way to look at it.

[Translation]

Mr. Geoffrion: No, I believe the word "abandonner" corresponds to the word "dispose."

Senator Fournier (de Lanaudière): It is a way of disposing, but it does not mean the same thing.

Mr. Geoffrion: In this case, you mean to say that the word "dispose" is broader than the word "abandonner".

Senator Bourget: That is it, it is broader. And there, if I understand it well, you have used words used in the international agreement, this is what has been said a while ago, it is possible, but I think, in the bill, it will create confusion. In any case, I believe we cannot translate the word "dispose" as it is used, and in taking into account the intent of the act, by the word "abandonner". It is my impression but I may be mistaken.

Senator Fournier (de Lanaudière): If I may, we can speak French, en français ou en anglais?

Le président: Oui.

Senator Fournier (de Lanaudière): You can "dispose" in a thousand ways, but you can "abandon" in only one way.

Mr. Geoffrion: In this case, if, as I have said, the English word is broader, we must start from it and not from the French one.

Senator Bourget: You are absolutely right. It is exactly the difficulty we are facing. We have to find a word in French, which will give exactly the definition of the word "dispose", because the latter is used in several circumstances. In Section 6, they use the word "rejeter". Here, they use it, and they say it means "abandonner". This is why I say you are absolutely right, and that we must start from the English word, and at the same time take into account what they exactly mean by "dispose", because it may also mean "to sell", you can "dispose" of something by selling it. Then, in the context of the bill, this is what causes the difficulty preventing from fully understanding why the English word "dispose" is translated into French by "abandonner".

Senator Denis: I believe that both words, English and French, are inadequate, because the only intent of this bill is to prevent the pollution of the ocean. Do we agree? Then, if it is the only goal, why introduce into the bill words which mean something else, which would not generate pollution?

There might be barges on the sea, and it would not involve any possible pollution. Then, to pollute it must go into the water. Is it not true?

[Text]

Mr. A. H. E. Popp, Legislation Section, Department of Justice: May I be permitted to answer that, Mr. Chairman?

The Chairman: Yes.

Mr. Popp: I drafted this piece of legislation in the English language. First of all, I would like to say that the object of this legislation is environment protection, and not just the narrow issue of pollution.

Senator Denis: That might make some difference.

Mr. Popp: Secondly, the use of the word "disposal" in the English version occurs, of course, because that is the term that is used in the Convention. In using that term we had two essential operations in mind—one being the act of sinking the ship or platform, or whatever it is, at sea, and the passive act of actually abandoning the ship, I think the English word "disposal" includes both of those operations.

Senator Bélisle: Mr. Chairman, if I may be critical of the way you are handling this matter, the opposition does not seem to be getting an opportunity to criticize this bill.

In closing the debate on second reading yesterday afternoon, following my speech on this bill, the sponsor of the bill said, and I quote:

Honourable senators, the honourable senator opposite has raised a series of very interesting questions. While I could attempt to answer them, I know I would be doing so in an amateur way. I do not see why you should be content with amateur answers, when you can get expert answers to your questions in committee. Therefore, I propose, if this bill receives second reading, to move that it be referred to the Standing Senate Committee on Health, Welfare and Science.

My criticism of you, Mr. Chairman, is that we were not informed sufficiently ahead of time of the meeting today. What is the rush in connection with this bill? I left my

office at 4.15 last night to attend to another obligation and I was not informed that a meeting was to be held this morning on this bill. Again, what is the rush?

With your consent, I move that we adjourn consideration of this bill to another date.

Senator Bourget: Mr. Chairman, I must say, I cannot agree with what my good friend has just said. I do not think you should be criticized, or that there is need for criticism. You are doing your duty as chairman of this committee. Members of the committee did receive notice of the meeting this morning. In all fairness, Senator Bélisle, I do not think there is any cause for criticism.

Senator Bélisle: Why were we not consulted before the decision was made that these witnesses would appear before the committee?

Senator Bourget: We did get notice, Senator Bélisle.

Senator Bélisle: I see no reason why this matter cannot be adjourned to another date.

Senator Bourget: I am not opposed to the adjournment. What I am opposed to is the fact that you have criticized the chairman. In all fairness, I feel that the chairman has done his duty.

Senator Denis: Hear, hear.

Senator Bourget: He is not trying to railroad this bill through.

Senator Bélisle: He is not being fair to the opposition.

Senator Bourget: I would like you to state one instance when the Government side of the Senate has been unfair to the Opposition side.

Senator Bélisle: I am not accusing you or the Government side in the Senate. I am criticizing the chairman of the committee for not consulting the Opposition as to when this bill would be considered in committee.

Senator Denis: There were Opposition members present at the meeting this morning.

Senator Bélisle: He knew I was unable to be here this morning.

Senator Denis: You received a notice, just as all of us did.

Senator Bélisle: I did not receive it. I left yesterday at 4.15 p.m. and, I am told, it was delivered at 4.35.

Senator Bourget: Well, that is not the fault of our chairman.

Senator Fournier (de Lanaudière): Senator Bélisle, give me a minute. Do not leave now. Are you a member of this committee?

Senator Bélisle: Yes, I am.

Senator Fournier (de Lanaudière): Were you or were you not convened to attend this morning?

Senator Bélisle: I was only called at a quarter to twelve to be here at a quarter to two.

Senator Denis: But you did receive the committee notice yesterday.

Senator Bélisle: I received it at 11 o'clock this morning.

Senator Fournier (de Lanaudière): Well, you cannot hold the chairman of this committee responsible for your absences, senator. It is not his fault if you have to be out of the Senate.

Senator Bélisle: He should at least have had the courtesy to consult the Opposition.

Senator Fournier (de Lanaudière): If you had to be out of the Senate yesterday and you had to miss the meeting this morning, surely you cannot hold the chairman of this committee responsible for that.

Senator Bélisle: The point is that on your side you always have full knowledge of these committee meetings but we don't. Apparently you are not interested in hearing

our voice or in having certain of the officials read the comments that we make.

Senator Bourget: Oh, no, senator, that is not right. Personally, I have no objection to adjourning this, if that is what you wish.

The Chairman: Order, please. Honourable senators, the bell has summoned the Senate. We have no authority to sit while the Senate is sitting and we have already had a motion to adjourn.

Senator Bourget: And that motion is not debatable.

The committee adjourned.

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FIRST SESSION—THIRTIETH PARLIAMENT
1974-75

THE SENATE OF CANADA
PROCEEDINGS OF THE
STANDING SENATE COMMITTEE ON
**HEALTH, WELFARE AND
SCIENCE**

The Honourable CHESLEY W. CARTER, *Chairman*

Issue No. 7

THURSDAY, JUNE 19, 1975

Second and Final Proceedings on Bill C-37, intituled:

“An Act to provide for the control of dumping of
wastes and other substances in the ocean”

REPORT OF THE COMMITTEE

(Witnesses: See Minutes of Proceedings)

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THE STANDING SENATE COMMITTEE ON
HEALTH, WELFARE AND SCIENCE

The Honourable C. W. Carter, *Chairman.*

The Honourable M. Lamontagne, P.C.,
Deputy Chairman.

and

The Honourable Senators:

Argue	Goldenberg
Blois	Inman
Bonnell	Langlois
Bourget	Macdonald
Cameron	McGrand
Choquette	Neiman
Croll	Norrie
Denis	*Perrault
*Flynn	Smith
Fournier	Sullivan—(20)
(<i>de Lanaudière</i>)	

**Ex officio* member

(Quorum 5)

Order of Reference

Extract from the Minutes of Proceedings of the Senate,
June 11th, 1975:

Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Macnaughton, P.C., seconded by the Honourable Senator Denis, P.C., for the second reading of the Bill C-37, intituled: "An Act to provide for the control of dumping of wastes and other substances in the ocean".

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Macnaughton, P.C., moved seconded by the Honourable Senator Fournier (*de Lanaudière*), that the Bill be referred to the Standing Senate Committee on Health, Welfare and Science.

The question being put on the motion, it was—
Resolved in the affirmative.

Robert Fortier,
Clerk of the Senate.

Minutes of Proceedings

Thursday, June 19, 1975

Pursuant to adjournment and notice, the Standing Senate Committee on Health, Welfare and Science met this day at 9:40 a.m.

Present: The Honourable Senators Carter (*Chairman*), Bonnell, Bourget, Cameron, Denis, Fournier and Inman. (7)

Present, but not of the Committee: The Honourable Senator Eudes.

In attendance: Mr. R. L. du Plessis, Legal Adviser to the Committee.

The Chairman explained to the Committee the reasons for holding the first meeting on Bill C-37 on Thursday, June 12, 1975 that is, the day next following the day on which the said Bill was referred by the Senate to the Standing Committee on Health, Welfare and Science.

The Committee then resumed its examination of Bill C-37 intituled: "An Act to provide for the control of dumping of wastes and other substances in the ocean".

The following witnesses were heard in explanation of the Bill:

Mr. Louis Martineau,
Translation Bureau (Justice);

Mr. Rémi L. Geoffrion,
Legislation Section, Department of Justice;

Mr. Ian D. Macaulay,
National Ocean Affairs Officer,
Oceanography Branch,
Department of the Environment;

Mr. John R. Monteith,
Chief,
Hazardous Material Management,
Environmental Protection Services,
Department of the Environment;

Mr. J. C. Carton,
Director of Legal Services,
Department of the Environment.

On motion of the Chairman, it was Resolved to report the said Bill without amendment.

At 10:50 a.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Denis Bouffard,
Clerk of the Committee.

Report of the Committee

Thursday, June 19, 1975

The Standing Senate Committee on Health, Welfare and Science to which was referred Bill C-37, intituled: "An Act to provide for the control of dumping of wastes and other substances in the ocean" has, in obedience to the order of reference of Wednesday, June 11, 1975, examined the said Bill and now reports the same without amendment.

Respectfully submitted.

Chesley W. Carter,
Chairman.

The Standing Senate Committee on Health, Welfare and Science

Evidence

Ottawa, Thursday, June 19, 1975.

The Standing Senate Committee on Health, Welfare and Science, to which was referred Bill C-37, to provide for the control of dumping of wastes and other substances in the ocean, met this day at 9.30 a.m. to give further consideration to the bill.

Senator Chesley W. Carter (*Chairman*) in the Chair.

The Chairman: Honourable senators, I see a quorum and I call the meeting to order.

Before we proceed with our consideration of Bill C-37, there are one or two things I want to say arising out of our last meeting. Those of you who were here will remember that Senator Bélisle was critical of me as chairman for calling the meeting without having consulted with him to whether it would suit his convenience or not. Now, I agree that the spokesman for the Opposition deserves some special consideration, particularly having regard to the circumstances in which they find themselves, but how far one can go with that must be determined by the circumstances in which we operate.

I think I should put on the record, for the benefit of the committee and for the benefit of others who may read *Hansard*, the sequence of events leading up to the calling of that meeting. As you know, the bill was sponsored in the house by Senator Macnaughton, and as soon as the bill had received second reading and was referred to committee I got in touch with Senator Macnaughton and asked him when, in his view, the bill should come before the committee. He said he was not certain as he had no specific plan in mind. I further told him that we would have to see what time slots were available. That was a week ago Wednesday, immediately after the bill had received second reading. We found that the following day, Thursday, was open, and there was no other opportunity available to us until the next Thursday, which is today. Tuesday was filled up, as there was a meeting of the Science Policy Committee that afternoon. Then, the next day there was a meeting of the Committee on National Finance, together with a meeting of the Committee on Banking, Trade and Commerce, so there was no time slot available Wednesday, which was yesterday. Then, looking forward to the kind week, again there seemed to be no suitable opportunity either. So we were left with the three Thursday—that is to say, last Thursday, today and next Thursday.

Now, if you look at the bill you will see it is a fairly substantial one. It has 23 pages and the committee of the House of Commons found it necessary to spend six sittings in considering it. Therefore, I could not assume that our committee could dispose of it in one meeting. I think it was appropriate to assume that at least two meetings would be required. With that in mind, I decided that we should not pass up the opportunity of using the time slot available last Thursday, so I called the meeting for that day. When

the decision was made, I got in touch with the Deputy Leader, and he gave the notice in the Senate before the Senate adjourned.

Furthermore, I called my secretary and asked her to get in touch with the members of the committee and with Senator Bélisle. I am sorry, but for some reason she did not get in touch with Senator Bélisle.

Senator Bourget: But he is not a member of the committee.

The Chairman: No, he is not, so she probably thought I had made a mistake. However, I did not know that Senator Bélisle had not been advised until he said so in committee. Those are the circumstances, honourable senators. As chairman, I felt it my duty to the Senate is to try to expedite the passage of legislation through the committee and to be as fair as possible to all other members of the committee because every senator is busy and has to serve on more than one committee. Therefore, when I found that a time slot was available last Thursday, I considered that I would be derelict in my duty were I to pass it up. I assumed that Senator Bélisle would receive the notice or that at least he would see the notice in *Hansard* and then, if it did not suit him, he would have the opportunity of letting me know and we could have made other arrangements. However, I consider it was still right to see what progress could be made on the bill in one sitting, assuming that more than one would ultimately be required. I felt I owed that explanation to the committee.

In setting the meeting for this week I approached Senator Bélisle, and because it was not convenient for him to go on earlier, I postponed this sitting until this morning. However, perhaps I should point out again, as Senator Bourget has done, that Senator Bélisle is not a member of this committee.

Senator Fournier (de Lanaudière): Who are the Conservative members of the committee?

The Chairman: Senator J. M. Macdonald, Senator Blois, Senator Phillips, Senator Flynn, *ex officio*, and Senator Sullivan.

Honourable senators, had Senator Bélisle been here I would have asked how you wished to proceed, because we have two problems. I understood that Senator Bélisle wanted to put some questions to the witnesses. Then we had the problem of translation which honourable senators were trying to deal with at our last meeting. Since Senator Bélisle is not present and we have the translators here, Mr. Geoffrion wishes to make a brief statement about the linguistic problem.

Senator Bourget: Before we proceed to that, perhaps it would be helpful if we had a copy of the *Senate Debates* because there we could see what kind of questions Senator Bélisle wanted to raise.

The Chairman: I will ask the clerk to get a copy of the Senate Debates in which this bill is dealt with.

So, honourable senators, shall we proceed with the questions dealing with translation now?

Senator Bourget: Yes, and then we can find out exactly what Senator Bélisle's questions were.

The Chairman: I think the experts made notes of those questions because they were in the gallery at the time that Senator Bélisle asked them.

I shall now call on Mr. Geoffrion.

[Translation]

Mr. Remi L. Geoffrion, Legislation Section, Justice Department: Honourable Senators, I looked at Sections 6 and 7 with Mr. Covacs, Chief of the Translation Service. More specifically, we have examined Sections 6 and 7 as far as the French verbs "rejeter" and "abandonner" are concerned. We must examine these two verbs in light of the context, and with regard to the definitions of both words "immersion" "permis". My opinion is that the French version serves exactly that purpose sought by using the English verb "dispose".

Of course, as you know, in translation, and here Mr. Martineau can correct me, very frequently the source language, in this instance, English, can choose a verb which will apply to all circumstances where as in the translation in this case, to French two words are required. That is the reason why in Section 6, we talk of disposing of a substance at sea by abandoning it. We have tried to give it a specific meaning. Then, immediately after in Section 7, we use the verb "abandonner" within the same context. So, I think the translation is correct. It is good and sound as far as I am concerned. This being said with all due respect.

Senator Denis: There is the word "rejeter", why not use the word "immersion"?

Mr. Geoffrion: No, actually, we dispose from a ship, we dispose of something on the ice, we dispose of a substance from something on the ice. You cannot dump it in the ice.

Senator Denis: "Déposer" very simply.

Mr. Geoffrion: Listen, I think I will let you proceed for a while, but we have used the term "rejet", "immersion" which is valid, in order to try and use it everywhere later on in the legislation.

Senator Denis: The objection brought forward by Senator Langlois is that we use the word "abandonner" when the captain of a ship decides to abandon a ship because it is in distress or it will sink or is sinking. This can lead to confusion when we use the phrase "to abandon ship".

Mr. Louis Martineau, Translation Bureau (Justice): Senator, the answer we can give is that we must not take for granted that the words of the English language that resemble words in French have necessarily the same meaning. We have an example here with the verb "abandonner" and the English verb "abandon" which can have the same meaning in one context and a totally different meaning in another. In this same line of thinking, I can give you an example of the English word "eventually". It means that "tôt ou tard" a person will do a given thing. But, in French,

if we say "éventuellement", in fact, we mean that maybe the person will do this thing or maybe not. If I say for example: Mr X "will eventually come", I mean that he will come for sure. If I say "il peut venir éventuellement" he may come and he may not. So, we must not take for granted that if we say "abandon ship", we must say in French "abandonner le navire" and that it means exactly the same thing. It may be so, in a context in particular. But in the context of section 6, since we say that we cannot abandon a ship without a licence, is totally impossible that we mean a ship in distress, because then, we would not go and get a licence.

Senator Bourget: As far as I am concerned, I have no objection if you think that this is the word we must use. You consulted the legal advisors of the Department. I raised this question because I thought that the English term "dispose" did not mean exactly "abandonner". But if from the legal point of view it is correct—I am not a lawyer—

Mr. Geoffrion: I for one, am satisfied.

Senator Fournier (de Lanaudière): With the explanation, I am also satisfied.

Senator Denis: It is valid.

Senator Fournier (de Lanaudière): Assuming that we have only one language, one or the other. The phrase we use in English is appropriate. Moreover, if we had only the French language, the way we proceed in French is also appropriate. So, I think that it is okay.

Senator Bourget: I agree.

[Text]

The Chairman: As I understand it, the English word "dispose", as used in this bill, and as it is intended to apply to a ship, covers three different actions that might be taken. One such action is taking a ship out to sea, opening the seacocks and letting her sink. That is sinking or scuttling the ship. Another action that might be taken, and which is covered by "dispose", is to tow a ship out to sea, chop the tow line and let the ship drift as a derelict or wreck. A third action that might be taken is that of taking a ship out of harbour and anchoring her, or putting her in such a condition that she may drift up on the shore and become a wreck.

We were told at the last meeting that the main purpose of this bill is not so much to prevent pollution as to protect the environment, and that it was in this wider context that we should be interpreting the language of the bill. The word "dispose", then, covers three different sets of circumstances that might arise, and when we come to the French language, they tell us that the word that has the widest scope, which would embrace all of these actions that are covered by the English word "dispose", is "abandonner", since it has the most general meaning and the widest possible application. Is that correct?

Mr. Martineau: Yes, Mr. Chairman, that is correct.

The Chairman: And am I correct in saying that the crimes or actions that the word "dispose", in English, is intended to cover, the word "abandonner" is intended to cover in French?

Mr. Martineau: That is right.

[Translation]

Mr. Geoffrion: In the Dalloz dictionary of French Law, the first word to define "abandon" is "délaisser volontairement une chose", which means that for example, the individual who abandons a ship at sea renounces all his rights. This is the definition of Dalloz.

Senator Fournier (de Lanaudière): Is he an acknowledged writer?

Mr. Martineau: Yes, he is an acknowledged French writer.

[Text]

Senator Bourget: I have no objections, Mr. Chairman, so if the officers of the department concerned are satisfied with that word, it is all right with me.

The Chairman: Is everybody agreed?

Hon. Senators: Agreed.

The Chairman: Thank you very much.

Honourable senators, I wish to apologize to Mr. Martineau. I should have introduced him at the beginning. He is Mr. Louis Martineau, from the translation section of the Department of Justice.

Thank you, Mr. Geoffrion. I understand you have another appointment.

Honourable senators, we come now to the questions raised by Senator Bélisle. They will be found in Senate Hansard at page 1050. He says:

Let me raise a few concerns which have occurred to me in relation to some of the provisions of Bill C-37. For instance, how overriding is the control exercised by means of these permits? What happens to substances not dealt with in the schedules?

Would someone like to deal with those two questions?

Mr. Ian D. Macaulay, National Ocean Affairs Office, Oceanography Branch, Ocean and Aquatic Affairs, Department of the Environment: Mr. Chairman, I think I can answer Senator Bélisle's question by saying that, although there are certain substances not mentioned in schedules—that is to say, the schedules address themselves only to a limited number of substances—all substances are covered by the bill. That is to say, a permit is required for the disposal or dumping of any substance in the sea. The schedules have single out for special attention substances which are either very dangerous or obnoxious to the environment—that is in Schedule I—or, in Schedule II, substances which the drafters of the international convention considered should be treated with special care before they were dumped into the sea. So everything is covered.

Senator Fournier (de Lanaudière): Mr. Chairman, I would like to raise a point of order. We do not need the French translator. We hear more of the translator than the one who is speaking. We do not need that at all.

The Chairman: We do not need the translation from now on.

Were you raising a point on that question, Senator Bourget?

Senator Bourget: No, Mr. Chairman.

The Chairman: Does anyone else have any questions arising out of the answer given by the witness? If not, we come to the next question:

In the granting of permits, the factors to be taken into account are highly technical and require considerable knowledge in the making of a judgment as to whether a permit should be granted. To state another example, I wonder if we know how much dumping has occurred, where it has occurred, and of what kind and leading to what cumulative effect.

Have you a comment on that, Mr. Macaulay?

Mr. Macaulay: Thank you, Mr. Chairman. We do have records established of the quantity of dredge spoils which have been dumped into the sea and these constitute the largest volume of materials dumped. There has been for some time consultation between different federal departments concerned with dredging material and disposing of it into the sea.

To move just a little further into this question, we have also made every attempt to be aware of what other substances are being dumped at sea and where they are being dumped. We have concerned ourselves with monitoring the effects of these dumpings on the marine environment. Naturally, without a bill of this nature we have no right to know, as it were, just what people are dumping. There are activities going on we are quite certain we do not know about, but I believe Mr. Carton can probably tell the committee just how we have used the Fisheries Act in controlling some dumping in the sea in the past.

Senator Fournier (de Lanaudière): I presume that this bill is the consequence of an international agreement.

Mr. Macaulay: That is correct.

Senator Fournier (de Lanaudière): In other countries that have signed the international agreement, do they have a law corresponding exactly to what we have before us?

Mr. Macaulay: Mr. Chairman, their law would not necessarily correspond exactly to this one but in principle their law would do the same things, because their laws, as this one, are concerned with ratification of the London Convention and must incorporate certain features to be used for that purpose.

Senator Fournier (de Lanaudière): You do not have copies of those laws?

Mr. Macaulay: We have copies of some.

Senator Fournier (de Lanaudière): What about the question that we were discussing a few moments ago? Are we the only country using two official languages in our law?

Mr. Macaulay: I am not quite certain that I can answer with any certainty. I know that I have seen legislation of other countries with side-by-side translation—English and, I believe, Norwegian. It is quite common. I do not know if this is the official usage but it seems to be quite prevalent.

Senator Bourget: I suppose that the schedules are the same and contain exactly the same substances?

Mr. Macaulay: They would have to contain at least the substances which are specified in the London Convention. Signatory states are permitted, however, to make an addition to these schedules if they see fit to do so.

The Chairman: Are there any further questions on that point?

Hon. Senators: No.

The Chairman: The next point raised by Senator Bélisle was—and I am still quoting from page 1050 of Senate Hansard:

Concentrations of substances may have already been introduced into the marine environment which, although far below the lethal level, may be responsible for reducing vitality or growth, or may be responsible for causing reproductive failures or for interfering with the sensory functions of sensitive marine life. Such changes would not be immediately apparent and, unless the tolerance levels were ascertained by a system of monitoring over a period of time, it would be difficult to attach the correct conditions to permit dumping.

In other words, what he is asking is, how do you determine the conditions under which dumping is to be permitted, unless you have some way of knowing the present level of pollution or the present condition of the sea? Do you plan to carry out a system of monitoring in connection with this?

Mr. Macaulay: Thank you, Mr. Chairman. The scientific establishments of the Fisheries and Marine Service, Department of the Environment, have for some years been looking at this question of sub-lethal concentrations of materials introduced into the marine environment and their effects on marine life. There are programs of monitoring the sea carried out routinely by our oceanographic laboratories which monitor the condition of the water. The people on the Fisheries side are more concerned with looking at the marine life itself and what happens to it when certain substances are introduced into the sea. We have toxicologists on the scientific staff who concern themselves with just this question which was addressed by Senator Bélisle.

The Chairman: Are there any further questions on that point? If not, Senator Bélisle then went on to say:

The minister has complete discretion in the power to issue, vary, suspend or revoke permits, so that an onus is placed on the interpretation by the minister as to the stringency of conditions attached to permits.

Do we have enough scientific know-how to make these decisions, or should provision be made for back-up research and the monitoring and surveillance of changing conditions in our coastal areas? Otherwise, how would it be possible to judge the effects of dumping over time or to distinguish sensitive marine ecologies from less vulnerable areas?

Mr. Macaulay: Yes, Mr. Chairman. I think I have addressed myself to this in my previous reply. We do have ongoing monitoring programs and these are attempting to re-assess at all times the conditions under which permits would be made available to dumpers. The criteria which would be applied in one location would be somewhat different perhaps from those applied in others. Our scientists make every attempt to understand just which local conditions should be most relevant in making a decision on whether to grant a permit.

Senator Bonnell: Has the minister the power to suspend a permit?

Mr. Macaulay: Yes, the minister has.

The Chairman: Senator Bonnell, clause 10(4) on page 8 states:

The Minister may suspend or revoke a permit or vary its terms and conditions where, having regard to the factors set out in Schedule III or in any report referred to in subsection 12(7), he deems it advisable to do so.

Senator Fournier: That is a question of administration.

The Chairman: The next point raised by Senator Bélisle had to do with alternate dumping. He said:

An especially important technical factor is the availability of other landbased methods of treatment, because alternative disposal must be an integral part of dumping control, as the minister mentioned in committee discussions. However, it is not clear that this problem has been adequately dealt with. If a habitual method of dumping at sea is banned then, unless other solutions are made available, pressure will remain to allow dumping privileges. Small municipalities, for example, may initially experience hardship because of the removal of their customary system of waste disposal which, traditionally, has been to dump the waste at sea by means of barges.

In other words, he says that if there is some material which must be disposed of and if the ordinary system of disposal which has been at sea is to be prohibited, are we not then bound to provide an alternate method of disposal?

Mr. John R. Monteith, Chief, Hazardous Material Management, Environmental Protection Service, Department of the Environment: In answer to that, Mr. Chairman, I should say that within the Environmental Protection Service of Environment Canada there are two groups concerned with waste disposal. One is the Solid Wastes Management Division and the other is the Hazardous Material Management Division. Both of these groups have active programs going on in which they are involved quite heavily with international and provincial counterparts. The Hazardous Material Management Section has ongoing programs with particularly, at this stage, the coastal provinces.

We are aware of the facilities in these areas and we are making surveys to determine what additional facilities will be required, if any. At this time we have no definitive knowledge of municipal or village waste being taken to sea. This disposal on land would fall within the provincial jurisdiction.

We work quite closely with the provincial authorities and experts and all of the alternatives will be considered prior to any issuance of a permit. We see no particular problem at this stage, from the information we have.

The Chairman: Senator Bélisle then went on to say:

This leads into my next question which concerns the provincial role. The bill is binding on Canada and the provinces. There is no provision for consultation although, as I have pointed out, some municipalities may initially experience difficulties in conforming to the new requirements. I understand there have been some discussions with the provinces. However, it would seem imperative that these be conducted on an ongoing basis so that isolated coastal communities at least know what is required of them. In some cases these communities may in fact be the victims of wastes

disposed in the sea, but as victims they will have no automatic recourse to be heard or compensated under the terms of this bill. The dumper has the mandatory right of appeal from a ministerial decision, but in the case of the public that right depends upon ministerial discretion—it is only if the minister deems it advisable that complaints by the public are given a hearing by the review agency. It is my feeling that the public is entitled to the right of review where its interests have been affected or grievously harmed. The United States legislation allows for public participation in the conviction of an offender.

Would you care to comment on that?

Mr. Macaulay: Thank you, Mr. Chairman. Senator Bélisle is correct in his remarks that we have had consultation with the provincial people prior to drafting the bill. At the previous meeting of the committee I said that certain clauses, in particular clause 6, had been inserted specifically at the request of provincial authorities. We do, as Mr. Monteith has said, have every intention of carrying on a dialogue with the provinces in matters which relate to their jurisdictions and the subject of this legislation. As a matter of fact, we are currently in contact with provincial authorities requesting their input on federal-provincial matters concerned with this legislation. There have been requests for meetings with provinces and federal authorities, and we are following up on this at the present time.

Senator Bourget: Will there be any supervisory work done by the provinces or will it be done only by the federal government?

Mr. Macaulay: Mr. Chairman, since the Minister of the Environment is named as the responsible minister in this legislation, we would not normally expect that the provinces would undertake any supervision of a legal nature. But since the ocean dumping will sometimes affect provincial authorities, undoubtedly we will hear from them on some questions.

The Chairman: I am not sure I understood your answer correctly. How is the public right taken care of? The dumper has a right of appeal, but it does not seem that a community or persons who might become victims of dumping would have any right of appeal or a recourse in any way at all. Just what protection does the public have?

Mr. J. C. Carton, Director of Legal Services, Department of the Environment: Clause 12 of the bill contemplates the possibility that members of the public may conceivably object. Clause 12(3) states

Where the Minister receives complaints from members of the public, in respect of

- (a) the granting of a permit or any terms and conditions thereof, or
- (b) any variation of the terms and conditions of a permit

the Minister may, if he deems it advisable, establish a Board and may refer any or all such complaints to the Board.

In his comments, Senator Bélisle was perhaps speaking of the fact that clause 12(3) states that the "Minister may" rather than the "Minister shall".

You can appreciate why the word "may" should be used there. If it was made mandatory on the part of the minister to set up a board of review at the instance of any member

of the public, inevitably there would be numerous useless complaints. Quite frankly, the administration of the law has to start with the assumption that ministers of departments will act responsibly. If any well-founded or rational complaints are made, the minister will do the things that are set out here in the act. But the whole procedure could be frustrated if it were made mandatory on the part of the minister to, at the behest of anybody who is a member of the public, immediately set government wheels in motion to set up the review board and go into all of the things that are required here, without a substantive reason for doing so. And that would be precisely the case if the act were to read, "the Minister shall" instead of "the Minister may."

So it is really not accurate to say that the public has no right of recourse, because the right of recourse is spelled out in the bill.

The Chairman: That was the next point raised by Senator Bélisle. He said:

I can understand that as an appeal agency, the review board cannot be expected to exercise any supervisory powers, but I feel it is unfortunate that a regulatory body was not provided for under the bill to carry out administrative functions concerned with surveillance and enforcement, and to which enforcement officers could be attached.

Why is a regulatory agency not provided for?

Mr. Carton: Mr. Chairman, there is provision later on in the bill for certain types of regulation.

The Chairman: There are regulations, but that is a different matter; he refers to a regulatory agency, as distinct from a review board. The review board deals with an emergency after it has arisen, but a regulatory agency would endeavour to prevent it.

Mr. Carton: In my opinion the actual formality of a separate agency would not be necessary. A provision is contained later in the statute for the appointment of officers, whose functions and duties would be to administer and enforce this act. That is to all intents and purposes a regulatory agency operating as a part of the department, in a similar manner to fisheries officers.

The Chairman: Individual officers, whose job it will be to control?

Mr. Carton: Exactly.

The Chairman: I believe we can take the remainder of Senator Bélisle's remarks in one stroke and ask for comment. At page 1051 he went on to say:

An independent dumping authority would be able to give its undivided attention to controlling dumping, since arrangements under existing agencies such as those under the Ministry of Transport and the Department of National Defence are not presently geared to the policing action that would be required.

After all, honourable senators, the legal sanction of this bill depends on the enforcement function. It is also not clear how liaison will be provided by the Department of the Environment with activities connected with international control of dumping. I note that the Minister of the Environment is now the minister designated for administering the law, and I hope that the ministry will be able to exert a strong position on the national and the international scene.

I share the concern of my colleagues in the other place that the use of the word "deliberate" in the definition of dumping may pre-empt control over accidental dumping. What kind of assurances do we have that all "accidental" dumping will come to the attention of the authorities since the only requirement to report is in the case of "emergencies"? I question whether it will always be possible to differentiate after the fact as to whether dumping occurred as a result of emergency or was solely an expedient measure.

Have you any comments to offer with respect to these two points? How do you relate this to international control or local control? How do you determine whether a dumping was accidental or an emergency?

Mr. Macaulay: In ratifying the international convention Canada will gain the right to participate in the inter-governmental organizations which will be established and have responsibilities for secretariat and other functions under the convention. This would take care of our liaison with the national authority.

I believe that Senator Bélisle also addressed himself to the question of how internationally the intent of the convention would be enforced. These matters have not been spelled out in detail, but in the London Convention there are provisions which indicate that the parties should co-operate with each other in the international organization. This would be, for example, to monitor the condition of the sea, discuss and develop scientific criteria concerned with making judgments as to whether or not permits should be issued. Article 73 of the international convention provides that the parties agree to co-operate in the development of procedures for the effective application of this convention, particularly on the high seas, including procedures for the reporting of vessels and aircraft observed dumping in contravention of this convention. So these matters have been considered and will be considered further at meetings of the inter-governmental authority.

The Chairman: Thank you, Mr. Macaulay.

Are there any questions with respect to this point? Are there any further questions on the bill?

Senator Bourget: No.

The Chairman: Do you wish to go through the bill clause by clause?

Senator Bourget: No, I think we have discussed the important aspects of the bill, but to move adoption of it I do not believe we have to go through it clause by clause.

Senator Bonnell: Does the reference to disposal on ice in clause 6 mean that in order for municipalities in certain areas of this country to dump their snow on the ice, the snow then melting and thawing in the spring, they must be granted permits for so doing?

Senator Bourget: It is not included in the schedule; snow is not prohibited.

Senator Bonnell: The clause reads: "No person shall dispose of any substance..."

Mr. Macaulay: I believe that in part there would be an exclusion, because the bill refers to dumping by ships, aircraft, platforms or other man-made structure at sea. With respect to the question of disposal of snow on ice—

Senator Bonnell: It says "any substance".

Mr. Macaulay: I do not believe that this question has been raised before and I do not believe anyone has considered it.

Mr. Monteith: I believe I can amplify Mr. Macaulay's statement. First of all, I should make it clear that this particular clause was requested by the provinces originally.

Senator Bonnell: That does not make it right.

Mr. Monteith: No, I agree, senator. In cases such as this we foresee that there would be very close liaison with the provinces with respect to this particular type of substance. Any disposal on ice, be it sewage, or snow, unless the snow was contaminated, would present no problem.

Senator Bonnell: But in my view there is a great educational problem involved. Most municipalities in my area of the country haul their snow by truck to dump it on the ice, where it melts and thaws. Unless a great educational program were mounted from coast to coast, people would be breaking the law before realizing it and, in my opinion, the bill should contain some exception.

The Chairman: That is an important point, really, because many communities do that.

Senator Bourget: In my view, snow would not be a prohibited or restricted substance.

Senator Bonnell: Provided a permit were obtained.

Mr. Monteith: There is the possibility that a blanket permit could be issued—and I refer this to the legal adviser—to the provinces specifically for this type of disposal of clean snow and ice.

Senator Bonnell: Could you ever get clean snow? That is a pretty broad definition of snow, when you include the word "clean", because as it falls through the air it picks up all the filth and soot and is full of bacteria.

The Chairman: It also accumulates bacteria on the ground.

Mr. Monteith: These are the normal bacteria, which would be washed out to sea. I will remove the word "clean".

Mr. Macaulay: Without referring to the specific nature of the problem, one other question was raised with respect to clause 6, disposal of substances on ice. This question was whether certain substances which proceeded from normal activities of persons hunting, the native peoples in the North, is the context.

Senator Bonnell: Yes, with respect to seal hunting.

Mr. Macaulay: Yes; whether they could be prosecuted for disposing of hunting remains on ice. It was suggested at that time that we could amend this clause to allow these people freedom from the provisions of the statute. While we felt that proposal had some technical merit, we felt really that the department would never seriously consider this sort of activity as being within the ambit of this legislation. We therefore left clause 6 as it was, feeling that people would not be applying to us for permits to dump normal hunting remains, for example, on ice. We would not, on our part, be interested in prosecuting them if they did not apply.

I think the same would apply to persons dumping snow on ice, unless, as Mr. Monteith says, the snow was contaminated with some material which was definitely deleterious to the environment. I am thinking more of persons who had contaminated snow for some reason in their possession, that would be snow to which some deleterious substance had been added, and we would not want to find ourselves letting people dump substances of this nature in the sea. But so far as normal snow is concerned, I would almost be prepared to say that we would let it pass.

Senator Bonnell: I tend to think, Mr. Chairman, that he would be a great man to have as a judge or as a fisheries officer, but I think you have to realize that there are some unfortunate officers and some judges who might not look at it the way he does. If you are putting snow on the ice which has other products in it, then you are guilty of an offence because of that other product which you are putting on the ice, and whether it is mixed with snow or mixed with butter makes no difference. So I suggest that we should put the exception of snow in there, because in my province every community is going to breaking the law. There is not much sense in making laws which everybody can break, with the idea that we will overlook them. I think we should make the laws to suit the times, the environment and the situation, and snow is just frozen water and the bacteria that it picks up is the same bacteria as falls on the sea anyway. I see no objection to make an exception of snow. This would protect the provinces that have to use this system all the time. Maybe there are provinces in Canada that do not have snow, but I am speaking for those that do.

Senator Bourget: Well, we certainly have snow in Quebec! But could it not be put in the regulations? Could they not be framed to take care of that?

Mr. Carton: I do not think you can put into regulations something to say that you can do something which otherwise you cannot do. I think it would be easier to provide for a permit where that was considered necessary. That would cover the type of situation you are speaking of, Senator, where some more zealous officer or some pettifogging judge might consider this as a serious offence.

Senator Fournier (de Lanaudière): Was this point discussed with the provinces?

Mr. Macaulay: Actually this clause was inserted following discussion with some of the provinces, and in this particular case they were concerned about people who trucked waste out on to the ice—garbage and things of that nature—and left it to sit out there so that when the spring breakup came it would sink and one would see no more of it. That is why we have this clause.

Senator Bonnell: Did you actually discuss snow with the provinces?

Mr. Macaulay: I did not myself participate in those discussions, and I do not know if snow was brought in particularly. I think the main concern was garbage.

Senator Bonnell: I think we would all be concerned about that. We would not want that dumped out there.

Senator Cameron: What about snow that has been salted? Very often salt is laid down and before the snow disappears as a result of the salting, the trucks come along

and gather it up and so the salted snow is dumped in the water.

Mr. Macaulay: There would normally be no serious effects expected from the dumping of salted snow into the sea. I might say that most of the activities of this nature, such as dumping snow into the sea and so on, are done from jetties and wharves that are attached to the land and which municipalities use. It is probably not so often the case that municipalities actually truck things out on to the ice. If the dumping were conducted from the wharf or the jetty, it would not be subject to this legislation. This is concerned particularly with dumping at sea.

The Chairman: That is outside of the harbours.

Mr. Macaulay: Not necessarily outside a harbour, but certainly not from outfalls or from ships connected to the land by ropes. In other words, ships at berth would not be covered by this legislation.

The Chairman: But you can drive from the land right out on to the ice in a truck without making use of a jetty.

Senator Bonnell: In the definition of "sea" we find that:

(2) For the purposes of this Act, "the sea" means

- (a) the territorial sea of Canada;
- (b) the internal waters of Canada other than inland waters;
- (c) any fishing zones prescribed pursuant to the *Territorial Sea and Fishing Zones Act*;

The fishery officers look after these waters, and the inland waters, to me, mean waters that run inland. I do not know any other definition of "inland waters."

Mr. Macaulay: "Inland waters" is defined in subclause (3) of the clause to which you have just been referring.

Senator Bonnell: And that is where they dump their snow, whether there is a wharf there or not.

Mr. Macaulay: If the senator is concerned with the dumping of snow in inland waters, then I can answer his question very simply by saying that inland waters are exempt from the provisions of this legislation.

Senator Bourget: You would not be concerned with sewage disposal?

Mr. Carton: No, this is concerned with dumping. Sewage disposal would not come under this.

Senator Bonnell: It says in clause 6 that this refers to paragraphs 2(2)(a) to (e).

Mr. Macaulay: It says in subclause (2):

For the purposes of this Act, "the sea" means

- (a) the territorial sea of Canada;
- (b) the internal waters of Canada other than inland waters;

And that exempts the inland waters from the provisions of the statute.

Senator Bonnell: Well, what are internal waters then?

Mr. Carton: Internal waters would be the waters of the sea inside certain baselines in these areas that have been incorporated into the territorial domain of Canada—that is, those waters which form part of the country.

Senator Bonnell: Well, the St. Lawrence River, would that be an internal water?

Mr. Macaulay: The St. Lawrence River west of a line drawn

(a) from Cap des Rosiers to the westernmost point of Anticosti Island; and

(b) from Anticosti Island to the north shore of the St. Lawrence River along the meridian of longitude sixty-three degrees west.

West of these lines is inland waters.

Senator Bonnell: Well, where are those lines in cities? Never mind the meridians. I do not understand them.

Mr. Macaulay: Anticosti Island is an island in the Gulf of St. Lawrence between the Gaspé Peninsula and the North shore. The reference is to the westernmost portion of that island.

Senator Bonnell: So that that part that is east of that island is considered inland waters and to the west of Anticosti Island is "outland" waters. At any rate it is regarded as being some other kind of water.

Mr. Macaulay: Essentially, points west of the western point of Anticosti Island are inland waters. Everything east of that point is considered to be the sea.

Senator Bonnell: The Gulf of St. Lawrence is the sea?

Mr. Macaulay: Yes.

Senator Bonnell: Therefore the waters around Prince Edward Island, when it comes to considering this question of snow, would be considered inland waters. Therefore, that is what I am talking about, Prince Edward Island particularly. Inland waters are covered under this clause; therefore it is against the law.

Mr. Macaulay: If they were actually trucking the wastes out from shore and dumping them, we could consider that clause 6 would apply, I believe. I think Mr. Carton will agree with me.

Mr. Carton: Yes, that is correct in circumstances such as you speak of, senator, taking it out to sea so it can be disposed of.

Senator Bonnell: My thought would be that under legislation passed by Parliament, which is supreme, which says that you cannot put snow on the ice in the Gulf of St. Lawrence, I do not think the Governor in Council would have power by regulation to overrule Parliament, because I think Parliament is supreme over the Governor in Council. I therefore do not think this can be solved by regulation. I think it has to be solved by changes in the legislation. We can say, "Let it go and nobody will be fined; the enforcement officers will never do anything about it. If something happens, then a sound judge will say it was only foolishness and throw it out of court." However, that should never have to happen.

Mr. Carton: The clause itself provides for the issue of a permit.

Senator Bourget: That is it.

Senator Bonnell: But you have to apply for a permit, and there will have to be an educational program so that everybody knows they cannot put snow on the ice any more, otherwise people will be breaking the law and not

knowing it until some enforcement officer comes along, who did not catch the fellow with small lobsters, or did not catch them fishing salmon out of season, but now he catches them putting snow on the ice so he says to himself, "I will get them anyway". I contend that it should not be there. We should not be making laws that we cannot enforce, and we should not be making laws that are not common sense. Therefore, we should exempt snow.

Mr. R. L. du Plessis (Legal Adviser to the Committee): If we do that, we also have to make an exception to that exception for contaminated snow.

Senator Bonnell: If you put contaminants in, that is a different kettle of fish. I do not think you should say whether the snow is contaminated, red, white or blue. You cannot put contaminants on there, whether it is in snow, water or butter. That is immaterial. If there are contaminants in the snow, you do not talk about the snow at all; you talk about the contaminants.

Mr. du Plessis: Some people could argue they were dumping snow, and that is it.

Senator Bonnell: That is correct. I am not going to argue the point any more.

The Chairman: Do you want to propose an amendment? Do you feel strongly enough about it to do that?

Senator Bonnell: I do not want to move an amendment. I think the departmental officials should look at it to see if they would accept an amendment along those lines. I do not want to propose amendments and start having them go back and forth between the Senate and the House of Commons. Perhaps the departmental officials could draft something now. I do not want anything drastic, but I think it should be brought to light, and I think the minister should be asked if he would accept such an amendment, rather than making an amendment now.

Mr. Monteith: The point is very well taken. I think the answer still is to leave the bill as it stands and consider a general permit to the province. From an environmental protection point of view, I would far sooner control it than let it go. I would recommend that the minister give a permit to each province allowing their municipalities to dispose of snow on the ice. This is the suggestion I would make, rather than change the bill.

Senator Bonnell: I would agree to that, if the minister would write to each province along those lines.

Senator Bourget: That would be one way out. I thought they could do it with a permit but, as Senator Bonnell said, everybody would have to know about that. If a general permit were sent out to the province, I think that would deal with it.

Mr. Monteith: Yes.

Senator Bonnell: Are the enforcement officers under this bill the fisheries officers?

Mr. Carton: No. Clauses 6, 20 and subsequent clauses provide for the appointment of officers to do the type of work contemplated by the bill.

Senator Bonnell: So we will have another group of civil servants; we are building up another administrative group.

Mr. Carton: I do not know whether some of these people might be those who are already appointed and working as

fisheries officers or something else. I really could not tell you what the administrative plans are for enforcement. Clauses 20 and 21, particularly, refer to the appointment of officers, the duties they are to perform and the authority they have. There is no reason why existing personnel cannot be appointed to carry out these duties, provided they have the time and are able to.

Senator Bonnell: It seems to me that every time we pass new legislation we set up another administrative group. We have got all these officers going around, who are not the same people, to protect the seas and the waters of Canada. My goodness, it will take hundreds and thousands of them. The first thing you know we will all the civil servants, except a few senators and MPs, and there will be nobody left to put the money into the offers. I would suggest that the department might consider appointing the present environment officers as officers under this legislation, so that they could do both duties at once. When they are out there seeing if a seal was really dead when it was skinned they could also look to see if the water was polluted; they could do the whole job at once as far as the environment is concerned.

Mr. Monteith: That is the practice now.

Senator Bonnell: But there will be a whole lot of new officers appointed.

Mr. Monteith: They have multiple duties for both environmental protection and fishery service work, things like that.

Senator Bonnell: But is there any assurance that they will be the same officers, that there will not be a whole new slate of environmental officers going out to watch the sea for pollution?

Mr. Carton: I could not give that assurance.

Mr. Macaulay: We have said that there was no intent to set up a separate regulatory agency under the legislation. We will make every attempt to use people who are currently employed by the government, and also people who are not employed by the government. Actually the minister can designate as an inspector or analyst for the purposes of this bill any person who in his opinion is qualified to be so designated. It could be that in certain circumstances we would want to designate the captain of a vessel at sea as an inspector for purposes of the bill. The master might be in a position to report an offence take samples and so on. In those circumstances, we could designate him as an inspector for purpose of the bill. There was no intention to set up a separate agency to administer this statute.

Senator Bonnell: Thank you. I have no more questions.

The Chairman: Shall I report the bill without amendment?

Hon. Senators: Agreed.

The Chairman: Thank you very much, gentlemen.

The committee adjourned



FIRST SESSION—THIRTIETH PARLIAMENT
1974-75

THE SENATE OF CANADA

PROCEEDINGS OF THE
STANDING SENATE COMMITTEE ON

HEALTH, WELFARE AND SCIENCE

The Honourable CHESLEY W. CARTER, *Chairman*

Issue No. 8

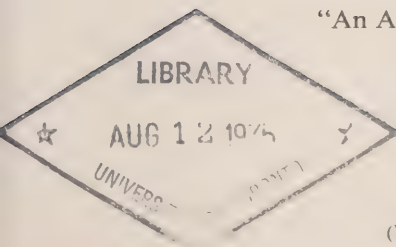
THURSDAY, JULY 17, 1975

First and Final Proceedings on Bill S-28, intituled:

“An Act respecting Royal Canadian Legion”.

REPORT OF THE COMMITTEE

(Witnesses: See Minutes of Proceedings)



THE STANDING SENATE COMMITTEE ON
HEALTH, WELFARE AND SCIENCE

The Honourable C. W. Carter, *Chairman*.

The Honourable M. Lamontagne, P.C.,
Deputy Chairman.

and

The Honourable Senators:

Argue	Inman
Blois	Langlois
Bonnell	Macdonald
Bourget	McGrand
Cameron	Neiman
Croll	Norrie
Denis	*Perrault
*Flynn	Phillips
Fournier	Smith
(de Lanaudière)	Sullivan—(20)
Goldenberg	

**Ex officio* member

(Quorum 5)

Order of Reference

Extract from the Minutes of Proceedings of the Senate,
Wednesday, July 16, 1975:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Carter, seconded by the Honourable Senator Buckwold, for the second reading of the Bill S-28, intituled: "An Act respecting The Royal Canadian Legion".

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Carter moved, seconded by the Honourable Senator Laird, that the Bill be referred to the Standing Senate Committee on Health, Welfare and Science.

The question being put on the motion, it was—

Resolved in the affirmative.

Robert Fortier,
Clerk of the Senate.

Minutes of Proceedings

Thursday, July 17, 1975

Pursuant to adjournment and notice, the Standing Senate Committee on Health, Welfare and Science met this day at 9:35 a.m.

Present: The Honourable Senators Carter (*Chairman*), Bourget, Croll, Denis, Phillips, Fournier (*de Lanaudière*), Inman, Macdonald, McGrand, Neiman and Norrie. (11)

Present but not of the Committee: The Honourable Senator Thompson.

In attendance: Mr. R. L. du Plessis, Legal Adviser.

The purpose of the meeting was to examine Bill S-28, intituled, "An Act respecting the Royal Canadian Legion" duly referred to the Committee under date of Wednesday, July 16, 1975.

The following witnesses were heard:

From the ROYAL CANADIAN LEGION:

Mr. Douglas McDonald (Brantford),
First Vice-President,
Dominion Command;

Mr. J. E. A. J. Lamy,
Dominion Secretary;

Mr. W. J. Gordon,
Administration Officer,
Dominion Command.

After hearing the witnesses and discussing the various clauses of the Bill, it was proposed by the Honourable Senator Croll that the said Bill be reported to the Senate without amendment.

The motion was *Resolved* in the affirmative.

At 10:20 a.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Georges A. Coderre,
Clerk of the Committee.

Report of the Committee

Thursday, July 17, 1975

The Standing Senate Committee on Health, Welfare and Science to which was referred Bill S-28, intituled: "An Act respecting the Royal Canadian Legion" has, in obedience to the order of reference of Wednesday, July 16, 1975, examined the said Bill and now reports the same without amendment.

Respectfully submitted.

Chesley W. Carter,
Chairman.

The Standing Senate Committee on Health, Welfare and Science

Evidence

Ottawa, Thursday, July 17, 1975.

The Standing Senate Committee on Health, Welfare and Science, to which was referred Bill S-28, respecting the Royal Canadian Legion, met this day at 9.30 a.m. to give consideration to the bill.

Senator Chesley W. Carter (*Chairman*) in the Chair.

The Chairman: Honourable senators, we have before us Bill S-28, an act respecting the Royal Canadian Legion.

We have as witnesses Mr. D. Gordon Blair, counsel for the Royal Canadian Legion, whom most honourable senators know. I will call on Mr. Blair to introduce the officials from the Legion.

Mr. D. Gordon Blair, Q.C., Parliamentary Agent, Royal Canadian Legion: Thank you, Mr. Chairman and honourable senators. I would like to introduce the witnesses from the Legion. On the chairman's right is Mr. Douglas McDonald of Brantford, who is First Vice-President of Dominion Command. Beside him is Mr. Jean Lamy of Ottawa, who is Dominion Secretary; and beside me is Mr. William Gordon, Administrative Officer of Dominion Command, who has worked for a long time on this projected amendment.

The Legion wishes to thank the Senate for the special consideration shown in advancing the bill, as was done this week without the usual delays between readings and meetings of this committee.

Honourable senators might wish to decide simply to ask questions of the witnesses or have a brief statement before the questioning begins. I might say that the bill was well discussed in the house, and Senator Carter's explanation appears to cover all the main points in it.

Senator Croll: Mr. Chairman, may I suggest that Mr. Blair give us a rundown?

The Chairman: Or perhaps one of the officials.

Mr. Blair: I would suggest, Senator Croll, that Mr. McDonald might make a brief statement.

Mr. Douglas McDonald, First Vice-President, Dominion Command, Royal Canadian Legion: Mr. Chairman and honourable senators, the purpose of the bill is to clarify and upgrade the existing act of incorporation which, as you know, has been in existence for many years. There have been changes throughout the years in the Legion that require some upgrading, updating of wording, and so on.

The primary concern is the holding of real property, which has changed considerably over the years. This bill is the culmination of perhaps four or six years of resolutions, and so on, emanating from the branches to our provincial commands and our dominion convention, the latter being the supreme authority of the Legion. It was

passed in principle last year in St. John's, Newfoundland, and the Constitution and Laws Committee was directed to draft these amendments and present them to the house. To date that is what has taken place. What is finalized today will go back and be put into our general by-laws, and so on.

Basically, that is the history of this. All the branches are aware, as are the provincial commands and the dominion convention of this procedure. The matter is then directed to the dominion executive council, which is the authority between conventions, to legislate as directed by the convention. That pretty well covers it, Mr. Chairman.

The Chairman: Thank you, Mr. McDonald. Are there any question?

Senator Bourget: Was there any objection raised by any branch in your organization?

Mr. McDonald: Not to our knowledge, senator. As I say, it has been placed before the various conventions at different levels. Actually it is on their behalf that we are doing this. They realize the problems involved, and on their behalf we are instituting the changes.

Senator Bourget: Can we say that all these amendments were unanimously approved by all the provincial branches?

Mr. McDonald: Yes. Of course, the dominion convention has approved it. The dominion convention is a delegate convention, a branch convention. It is the final authority, and it gave us the go ahead at the last dominion convention.

Senator Croll: What is the purpose of the amendment to section 11(2) requiring consent prior to disposal, except in the usual course of activities?

Mr. Blair: Mr. Chairman, earlier Senator Croll asked for a rundown on the bill. If I were to direct the committee's attention to the main parts of the bill, I would suggest that members of the committee might look at pages 3 and 4.

What the Legion is doing is dealing with quite an old act of Parliament, which incorporated it in 1948. However, that act reproduces a charter granted under the old Companies Act in 1925. As we got into particular situations, much of the language appeared unclear and confusing. Essentially, what was required was a restatement of the procedures which have heretofore been followed in respect of the dissolution of the branches, the revocation of charters and the handling of the property of branches which have been dissolved and gone out of business.

The purpose of the proposed amendment to section 11(2) is to put in statutory form the procedures which are now followed in almost all commands of the Legion. The property of branches really belongs to the Legion; it does not

belong to the members who happen to be members of the branch from time to time. It is contemplated that if there are major dealings affecting the property holdings, such as mortgaging of property, or the building of new buildings, or the sale of certain property in order to acquire new premises, or even in the course of going out of business, this kind of activity requires the approval of the provincial command. This kind of procedure would not apply to the ordinary business of the branch, whatever it may be involved in.

Senator Croll: Would a branch need consent from anyone if it were to give up the lease on its premises and take out another lease on other premises?

Mr. McDonald: No.

Senator Croll: If they sold a particular piece of property and took the money and put it into another property, they would need consent?

Mr. McDonald: That is right.

Senator Macdonald: To give you a particular instance, a branch wanted to put an addition on its building. The property was held by trustees. For some reason or another, the Legion discouraged the idea of having this branch incorporated. We put a mortgage on it. In fact, over the years we put several mortgages on it. We did not have to apply to Halifax to get permission, or anything else, prior to putting mortgages on the property.

It seems to me that this amendment would take away some of the local autonomy in respect of such decisions, placing it with the provincial or dominion commands.

Mr. McDonald: What we are really seeking through this amendment is protection for the branch members. We have had incidents where a branch president or an officer in the position of building chairman has committed a branch, on his own initiative and without the prior approval of the membership, to some project. The procedure that is proposed now is that the branch would transmit a notice of motion to its members to attend a special meeting for the purpose of discussing the building or acquiring of new property, the sale of existing property, and so forth, and if there was a majority vote in favour of such a project it would be submitted to the provincial command for approval, which would be forthcoming.

Senator Macdonald: I do not think it should be submitted to the provincial command.

Mr. McDonald: It is only to show that the proper procedure has taken place; that it is the wish of the majority of the members of the branch and not of just one or two persons in that branch. Actually, the branch notifies the command of the decision as opposed to submitting it for approval.

Senator Macdonald: That is not what the amendment says.

Senator Croll: That is good protection.

Senator Bourget: I think it is good protection.

Mr. McDonald: What prompted this amendment was an incident that took place six or seven years ago. In that particular situation, a branch got its membership down to around 15 or 16. It then sold the real property and the proceeds were divided amongst the remaining members.

The branch charter was then handed in to provincial command and we were precluded from any action whatsoever in protecting the members of that branch. As long as the charter is maintained properly under the bylaws and the Constitution, the real property is under the jurisdiction of the branch. However, the moment the branch deviates from that situation, then the Legion feels, and rightly so, I suggest, that the provincial command should have some prior notice of what the branch intends to do, and that the members of the branch should be aware of what is happening.

Senator Phillips: A supplementary to Senator Macdonald's question, Mr. Chairman. What happens in the case where the membership of a branch votes to enlarge a building and then are refused permission by provincial command to do so?

Mr. McDonald: That would then constitute an appeal situation, senator, to a higher level, which would be the dominion command. However, I think there would have to be very genuine circumstances under which the branch command would not get approval.

Senator Phillips: But the proposed section 11(2) does not provide for an appeal procedure. There is an appeal procedure provided for in other sections of the act.

Mr. McDonald: Our general bylaws provide for appeals to a higher level on a decision made at a lower level. That is the procedure in the Legion.

Senator Denis: Clause 7 of the bill amends section 13(2) by substituting the word "command" for the words "executive council." Why is there not a definitions section at the beginning of the bill defining the word "command"?

Mr. Blair: In answer to your question, senator, there is a definitions section at the beginning of the act incorporating the Royal Canadian Legion wherein both "dominion command" and "provincial command" are defined. Perhaps I can read the two definitions in section 1. They are as follows:

(b) "dominion command" means the supreme authority of the Legion, that is the dominion convention and, when it is not in session, the dominion executive council;

(c) "provincial command" means the provincial convention and, when it is not in session, the provincial executive council;

When we were called upon to revise the statute it was decided that we might try to clarify some of the wording. As you can see from what I have read, throughout the statute we should refer to these organizations as "commands," rather than as the "executive council of commands."

Senator Denis: But the bill just talks about commands, not necessarily provincial or dominion.

Senator Thompson: Clause 3, on page 4 of the bill, talks about the dominion command and the provincial command.

Mr. Blair: There are two types of command, dominion and provincial. If our work has been done properly, every reference under the act will be specific as to whether it is dominion or provincial. When this bill is consolidated into the statute, the two words "dominion" and "provincial" are defined.

Senator Denis: Yes, but clause 7 does not refer to dominion command; it refers only to provincial command.

Mr. Blair: That is perfectly in order, because this deals with another feature of the Legion operation. Any command, which would be dominion or provincial command, could create a ladies' auxiliary, but it is highly unlikely, I take it, that there would be one at dominion command. Is that correct, Mr. McDonald?

Mr. McDonald: Yes.

Mr. Blair: However, we copied the old statute. I should say that Mr. du Plessis studied the statute with me and there would be a temptation after 50 years to re-write a number of sections, but we made a minimum number of changes.

The Chairman: I notice that the act itself refers to the dominion command. It says:

"dominion command" means the supreme authority of the Legion, that is the dominion convention and, when it is not in session, the dominion executive council;

That passage continues with respect to provincial command, as follows:

"provincial command" means the provincial convention and, when it is not in session, the provincial executive council;

Now the words "executive council" are to be removed. I would like you to clarify the reason for that, which I assume is that the act as it presently stands gives the dominion the same legal authority as dominion command. Dominion command is the dominion convention and when the convention is not in session the act gives the dominion executive council the same legal authority as the dominion command would have. However, now I understand you have removed the words "executive council", but the executive council will still exist. Therefore the dominion executive council now will derive its authority from provincial command and not from the act itself, is that correct?

Mr. Blair: If I can just go back to where we started, the head organization in the Legion is dominion command, and dominion command is defined in the statute as being the dominion convention, which is a delegated convention at which every branch is represented. However, in between conventions the authority of dominion command is vested in the dominion executive council. The same arrangement exists at the provincial level: the provincial command is really the provincial convention, at which all branches are represented, but in between it is the executive council. So that if you look at our statute as it is now, it is slightly wrong, because if refers to the president as being the president of the dominion executive council, or the president of the provincial executive council when, in fact, he should be referred to as the president of the command.

Senator Denis: Do you mean to say that provincial command includes dominion command?

Mr. Blair: No, they are separately defined.

Senator Denis: Section 13.(2) reads as follows:

Ladies' auxiliaries shall be governed by the by-laws passed by such auxiliaries but such by-laws shall not become effective unless they conform to the purposes

and objects of the Legion and only if they have been approved by the respective branch and the provincial command having jurisdiction.

No reference is made to dominion command, so it does not relate.

Senator Bourget: They come under the jurisdiction of the provincial command.

Senator Denis: There must be some kind of conventions or meetings. Why are the definitions of dominion command and provincial command given and this clause refers only to provincial commands?

Mr. Blair: The senator has raised a good point. May I say that there is no possibility whatsoever, I am sure, of a ladies' auxiliary of dominion command being formed. However, at provincial commands they could be formed, and I see now what is causing confusion in section 13.(1). It refers to auxiliaries being created by a command or branch. However, when it comes to their by-laws it says they must be approved by a provincial command. Of course, if there are auxiliaries at a command level, they will only be at a provincial command. From the standpoint of the operation of the Legion it is not something which causes any problem and the section as we put it forward has operated in the past and will in the future. As you can see, we have simply changed the word from "council" to "command".

Senator Neiman: I wonder if any thought has been given to changing that word "dominion"; it has a rather old-fashioned sound.

Mr. McDonald: It is worth about three bullet holes every time you attempt it. Even when we refer to committees as national committees we are immediately corrected and must refer to dominion command committees. The membership wishes to retain that dominion connotation in connection with their committees at the national level. When we speak of the national magazine we are corrected and told that we are dominion officers and it is a dominion magazine.

The interpretation by the membership of the Legion, of course, is that the dominion command convention is the supreme authority and it sets the guidelines, policy and so on, everything being regulated for that purpose. Our provincial commands may generate their own by-laws as long as they are in line with and not contrary to the dominion by-laws.

Going in the other direction the same process is carried on. Resolutions and so on emanate from the branches to the zones, districts, provincial command and dominion command. With respect to a ladies' auxiliary, this is a point. A ladies' auxiliary is chartered to a branch, not to a command. Therefore the formation of a command of the ladies' auxiliary in any provincial command is under the authority of the provincial command of the Legion, because really the authority for a ladies' auxiliary lies, starts and stops at a branch. It is the branch to which they are chartered in the Legion. For this reason we have not included dominion command, because some provincial commands have yet to form ladies' auxiliaries. The Legion is well aware of the requirements in this situation.

Senator Inman: Mr. Chairman, my questions have been pretty well answered in connection with clause 7. I happen to be an honorary president of the Canadian Legion and for most of the years of the war I was president of a ladies'

auxiliary. We used to make many of our own decisions; perhaps the wartime years made a difference. However, my question is, what authority do these ladies' auxiliaries have to make decisions of their own?

Mr. MacDonald: We speak of branch autonomy, which is very jealously guarded in the Legion. This is where it was all based originally when the Legion was formed, more so than on commands. The branch has the autonomy up to a point to write its own branch by-laws and so on. The reason they are approved by a senior command is to ensure that they are not contrary to existing general by-laws. They still have the autonomy to pass their own branch by-laws, as long as they are not contrary to provincial or dominion command by-laws.

Mr. J. E. A. Lamy, Dominion Secretary, Royal Canadian Legion: The auxiliaries can also pass their own by-laws. It is a brave man who tells them not to do it.

Senator Macdonald: I should like to go back to clause 5. Under this I take it a branch could buy practically any kind of real property it wanted if it was necessary or useful to the branch. There is no limitation on what a branch may acquire, yet there is a limitation on selling it or getting rid of it. If you believe it necessary to provide that a branch cannot dispose of property without the approval of the provincial command, I think the same thing should apply to subsection (1), that they should not be able to acquire property without approval. It leaves it wide open.

Mr. Lamy: These provisions have been agreed to by the branches at a convention. Each item was proposed at the last convention; they were all debated and approved.

Senator Macdonald: I do not want to interrupt, but I have been to all kinds of conventions, such as these, and these things go through pretty quickly. Let's face facts.

Mr. Macdonald: Some things go through quickly, unless some of their branch autonomy is being taken away, which they guard very carefully.

Senator Macdonald: Subsection (2) says:

—except in the ordinary and usual course of its activities.

That seems somewhat vague to me. If a branch wanted to dispose of a stove, for example, and get a new one, under that subsection they would have to get the approval of the district command.

Mr. MacDonald: Under ordinary circumstances.

Senator Macdonald: It is not in the ordinary and usual course of its activities.

Mr. MacDonald: I think basically we would define this in the ordinary procedures of a branch as the day-to-day business. Our interpretation would be that if the furnace blew up or the stove had to be replaced, or they wanted to buy some new furniture, we would consider this an ordinary situation. If they wanted to add a 50-foot addition to the branch, that would not be an ordinary situation and would require approval. This is the way we in the Legion would define ordinary and extraordinary circumstances.

Senator Macdonald: I see what you mean.

Senator Bourget: I think Senator Macdonald is quite right. Subsection (2) has been included, I understand, to protect the members. Why not protect the members in

both ways, in subsections (1) and (2)? That is what you want to say, is it not?

Senator Macdonald: Yes. It does not seem logical to me that they have to approve one but not the other.

Senator Bourget: Exactly. I think it would be good protection for the members. I am no expert, but as I look at it they should be protected both ways, in acquiring and selling.

Mr. Blair: Perhaps I might respectfully suggest that the Legion is pre-eminently a democratic organization. Senator Macdonald, myself and others have been at Legion conventions, and we know that these decisions are worked out over a long time and represent the view of the convention. It is quite a step to insert in this bill a provision that any disposition of property by way of a sale, a mortgage, or whatever, must be subject to the specific approval of a provincial command. What the legionnaires did not decide to do at their convention was to put the same kind of restriction on the acquisition of property. I think we would have a great difficulty if that kind of addition were made to the bill. Let me add that if the purpose of a mortgage of property is to raise money to make an addition to the property, that kind of transaction would be reviewed by the provincial command. Much as I appreciate the consideration, as we all do, of the Senate for the welfare of members, I think it will be understood that we have no mandate here to agree to the proposal that has been made.

Senator Bourget: I will not insist on that.

Mr. MacDonald: I think what will happen is that when these things are finalized the procedure will be to start to draft by-laws to coordinate with this bill, and you will find the by-laws of the provincial command will bring both parts of this into play for protection.

Senator Croll: What percentage of branches own their property?

Mr. MacDonald: That is very difficult to say. I would say almost 80 per cent, but that is just a guesstimate. There are very few in rented or leased premises, that I know of.

Senator Croll: In some of the larger cities, such as Toronto, there are leased premises.

Mr. MacDonald: This is one of our concerns. Property that they might have bought 30 or 35 years ago in the heart of Toronto is now worth \$1 million or \$1½ million for the property alone. This is a consideration we have to be very careful about.

Senator Croll: I know the problem. I agree with Mr. Blair that they would very much resent being told what to buy and what not to buy. What is there for them to do, run a beer parlour if they cannot even buy it?

Senator Macdonald: It seems to me that subsections (6) and (7) of clause 3 give a great deal of authority to the presidents of provincial and dominion commands. Subsection (7) says:

The president of a provincial command may, with respect to his command, after inquiry and for cause clearly stated, suspend the charter or powers of any branch or auxiliary or any officer thereof, and such action is appealable.

I think there should be more protection than that, and it should perhaps say, "The president, after consultation

with the executive of the provincial command,—“I think this is an extraordinary power to give to one person.

Mr. McDonald: In my experience, this has been used only in extreme circumstances where it has been necessary. It is not abused by any manner of means.

Senator MacDonald: I am not saying it will be abused.

Mr. McDonald: I think it is necessary. I do not think it is merely a question of somebody 'phoning the president and saying, “So-and-so has done such-and-such,” and the president takes the action to suspend.

Mr. Lamy: There have been occasions, although not too often, when action has had to be taken immediately; there has been no time to convene the council; something had to be done, because unless the officer or the charter was suspended it might be prejudicial to the Legion, the branch or the members. The president of the command is responsible, and if he does something wrong it will be appealed to the council.

The Chairman: I think it is clear from the subsection on the explanatory page that under the present act they do not even have to have an inquiry, so this clause gives a little more protection, because it can be done only after inquiry. Under the present act an inquiry is not necessary.

Senator Fournier (de Lanaudière): Do you have a figure for the total value of the properties of the Legion throughout Canada?

Mr. McDonald: We are now in the process of compiling this through what we call a branch profile; we are trying to put the whole picture together coast to coast. Some years ago we assessed it at somewhere around \$100 million. I believe it is in excess of \$200 million now, in real property owned by the Legion coast to coast. The branches being built today in the larger centres are now \$500,000 or \$1 million apiece, in the present-day situation.

Senator Croll: The one you are building here?

Mr. McDonald: Yes, the dominion command building.

Senator Macdonald: Are there any district commands any more?

Mr. McDonald: You mean charters?

Senator Macdonald: Yes.

Mr. McDonald: Just yours in Cape Breton; that is the only one. We are going to get it back one of these days, too!

Senator Fournier (de Lanaudière): Do you have subsidies from the federal government, or does the money only come from the members?

Mr. McDonald: Only from the members.

Mr. Lamy: We have \$9,000 a year for our service bureau. This was allotted 40 or 50 years ago when \$9,000 was a lot of money. We do a lot of work that by rights should be done by the Department of Veterans Affairs; however, we do it. I must say that honourable senators and MPs sometimes refer cases to us by preference over the Department of Veterans Affairs. In the 1930s they gave us \$9,000 to help us run that bureau. They have given us \$9,000 a year ever since, although costs have risen. At one time this was 50 per cent of the cost of operating a service bureau. It now costs us something like \$225,000 a year to operate that bureau.

Senator Croll: But you still get the \$9,000?

Mr. Lamy: We still get the \$9,000, yes.

Senator Croll: Do you get any tax exemption?

Mr. McDonald: Some branches throughout the country, through a private member's bill provincially or the local council, may be given some relief on taxes; but that has gradually gone by the wayside.

Senator Phillips: I have one further question. In winding up or dissolution, the assets go to the provincial command. They are held in trust for a certain length of time. How long are they held in trust? Is there any specific length of time?

Mr. McDonald: That is generally legislated by provincial commands. I think in Ontario it is five or six years. If there is a possibility of organizing another charter within that time, the property, through mutual agreement, will sometimes revert to another community organization, or to the city itself, if it is felt that the property is better used that way.

Senator Phillips: After the period of time that the money is held in trust, for what purpose does the provincial command use it?

Mr. McDonald: It is used in the general process of the administration of the Legion, if that is their wish. You will realize that we accept the liabilities up to a point, equitable with the assets, when there is a disposition. So it is incumbent upon the command at that point to look after the liabilities.

Again, it works its way down through the command. We provide the general provision; the provincial command will then take it, and they will legislate and decide what to do with the funds that are available.

Senator Phillips: Earlier you gave us a figure for the work of Legion property, and said it is approximately \$200 million. We can assume that in about 10 or 15 years it will probably be worth a great deal more. Under this section we seem to be passing on a great deal of money without any control being provided in the act.

Mr. McDonald: Our concern was very genuine five or six years ago. We could see, because of the age factor, that it would be quite a common situation in another 10 or 15 years. I think you are aware that we have opened membership in the Legion to the sons and daughters of members, which has more or less generated a very sound future for many years to come. I do not think this position will be a problem by virtue of branches surrendering charters. It will now be maintained, when at one time we had genuine concern over what would be done with it, because it had to wind up sooner or later because of the age factor of veterans. We no longer have that particular concern. Again, this relates to the particular cases where we have had problems. They are not numerous, but they do exist.

Senator Croll: Has membership increased?

Mr. McDonald: Yes. Our membership at present is 460,000. We hope that it will be 500,000 by our fiftieth anniversary convention next summer in Winnipeg.

Senator Croll: Is that the highest ever?

Mr. McDonald: Yes.

Senator Croll: Is there a fair percentage of young people?

Mr. McDonald: Yes; it is coming. We had a situation where we thought we might get something like 35,000 in the first years, and we got 49,000 in the first year. We opened the ranks. We still have to legislate their part in the Legion. They are associate members and not full voting members.

Senator Fournier (de Lanaudière): What is the fee for being a member of the Legion?

Mr. McDonald: The fee is set by branches and commands on their own jurisdiction. There is no set fee, other than the per capita that is paid to various commands by members.

Mr. Lamy: Senator, we at dominion command get \$4.90 per year from each member.

Senator Croll: What does the provincial command get?

Mr. Lamy: Somewhere in that vicinity.

Senator Croll: Then, \$10 from each member goes up higher?

Mr. McDonald: Each provincial command is different. I believe in Ontario it is \$2.60.

Senator Croll: I did not think it was that high. I do not remember paying such fees. Now it is about \$10, \$12 or \$15. Do some pay more than that?

Mr. Lamy: Some do. In some branches it is now up to \$20 per year, depending on what the branches vote.

Mr. McDonald: The administration throughout the Legion has kept the dues as low as they can, purposely, because of the diverse membership in the Legion.

The Chairman: Have you a question, Senator Phillips?

Senator Bourget: Put the question.

The Chairman: Before I put the question, I would like to clear up one question I asked earlier about the executive. In the old act the executive council had a definite legal status. What is the status now of the executive council? It is not mentioned in the act; they have taken out the words.

Mr. Blair: The words "executive council" are not deleted from the act. The executive council is referred to in the definitions section. What we are attempting to do is to make the act a little better in terms of its applicability. Wherever we had the phrase "dominion executive council" or "provincial executive council," we have called it by its proper name, which is "dominion command." That includes the executive council when the convention is not in session.

The Chairman: So, it is still contained in section 1. The bill only removes it from other sections.

Mr. Blair: Yes.

Senator Croll: You have a motion, Mr. Chairman.

The Chairman: Shall the preamble carry?

Hon. Senators: Carried.

The Chairman: Shall the title carry?

Hon. Senators: Carried.

The Chairman: Shall I report the bill without amendment?

Hon. Senators: Agreed.

The committee adjourned.



FIRST SESSION—THIRTIETH PARLIAMENT
1974-75

Government
Publications

THE SENATE OF CANADA
PROCEEDINGS OF THE
STANDING SENATE COMMITTEE ON
**HEALTH, WELFARE AND
SCIENCE**

The Honourable CHESLEY W. CARTER, *Chairman*

Issue No. 9

WEDNESDAY, NOVEMBER 5, 1975

Complete Proceedings on Bill C-23, intituled:

**“An Act to provide for the payment of superannuation
benefits to Lieutenant Governors”**

REPORT OF THE COMMITTEE

(Witness: See Minutes of Proceedings)

THE STANDING SENATE COMMITTEE ON
HEALTH, WELFARE AND SCIENCE

The Honourable C. W. Carter, *Chairman*

The Honourable M. Lamontagne, P.C.,
Deputy Chairman.

AND

The Honourable Senators:

Argue	Inman
Blois	Langlois
Bonnell	Macdonald
Bourget	McGrand
Cameron	Neiman
Croll	Norrie
Denis	*Perrault
*Flynn	Phillips
Fournier	Smith
(<i>de Lanaudière</i>)	Sullivan—(20)
Goldenberg	

**Ex officio* member

(Quorum 5)

Order of Reference

Extract from the Minutes of Proceedings of the Senate,
Thursday, October 30, 1975:

"Pursuant to the Order of the Day, the Honourable Senator Bourget, P.C., moved, seconded by the Honourable Senator Hayden, that the Bill C-23, intituled: "An Act to provide for the payment of superannuation benefits to Lieutenant Governors", be read the second time.

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Bourget, P.C., moved, seconded by the Honourable Senator Denis, P.C., that the Bill be referred to the Standing Senate Committee on Health, Welfare and Science.

The question being put on the Motion, it was—
Resolved in the affirmative."

Robert Fortier,
Clerk of the Senate.

Minutes of Proceedings

Wednesday, November 5, 1975.

Pursuant to adjournment and notice, the Standing Senate Committee on Health, Welfare and Science met this day at 4:15 p.m., the Chairman, the Honourable Senator Carter, presiding.

Present: The Honourable Senators Bourget, Cameron, Carter, Croll, Flynn, Fournier, Inman, McGrand, Norrie and Smith. (10)

The Committee proceeded to examine Bill C-23, intituled: "An Act to provide for the payment of superannuation benefits to Lieutenant Governors".

Mr. H. D. Clark, Director, Pensions and Insurance Division, from the Treasury Board Secretariat, was heard in explanation of the Bill.

Mr. Clark made an opening statement; he then answered questions put to him by members of the Committee.

On motion of the Honourable Senator Flynn, it was *Resolved* to report the said Bill without amendment.

The Committee agreed, however, that certain observations relating to the above Bill should be made. The observations in question are contained in the Committee's Report to the Senate. (*The relevant report follows immediately these Minutes.*)

At 4:45 p.m., the Committee adjourned to the call of the Chairman.

ATTEST:

Patrick J. Savoie,
Clerk of the Committee.

Report of the Committee

Wednesday, November 5, 1975.

The Standing Senate Committee on Health, Welfare and Science to which was referred Bill C-23 intituled: "An Act to provide for the payment of superannuation benefits to Lieutenant Governors" has, in obedience to the order of reference of Thursday, October 30, 1975, examined the said Bill and now reports the same without amendment.

Your Committee, however, considers it important that the following observations be made:

The Bill models the pensions for Lieutenant Governors on the pattern selected for term appointments in the diplomatic service. The Committee felt that in view of the similarity of office and duties, legislation providing pensions for Lieutenant Governors should be patterned on the legislation providing a pension for the Governor General.

The Committee felt that the Bill should be made applicable to former Lieutenant Governors or at least to those in office when Bill C-23 was tabled in October 1974. Since then one Lieutenant Governor has died and his widow is not provided for.

Lieutenant Governors, who formerly were Members of Parliament, would not receive their pensions as such until Bill C-52 becomes law. This creates an unfair situation.

Your Committee was of the opinion that it would have been more just and equitable to base the pensions of Lieutenant Governors on their present salaries rather than on the five-year average.

Your Committee considered that it did not have authority to amend the Bill being reported on. However, your Committee considered that these matters should be called to the attention of the Senate.

Your Committee therefore recommends that the Government or the appropriate ministry consider the advisability of reviewing this legislation in order to remedy these defects at the earliest possible date.

Respectfully submitted.

Chesley W. Carter,
Chairman.

The Standing Senate Committee on Health, Welfare and Science

Evidence

Ottawa, Wednesday, November 5, 1975

The Standing Senate Committee on Health, Welfare and Science, to which was referred Bill C-23, to provide for the payment of superannuation benefits to Lieutenant Governors, met this day at 4:15 p.m. to give consideration to the bill.

Senator Chesley W. Carter (*Chairman*) in the Chair.

The Chairman: Honourable senators, we have before us Bill C-23, to provide for the payment of superannuation benefits to Lieutenant Governors. As you know, this bill is not a particularly controversial one. It was referred to the committee mainly because of the concern expressed about the adverse effects that it might have on certain lieutenant governors.

We have with us today Mr. H. D. Clark, Director, Pensions and Insurance Division, Treasury Board Secretariat, and Mr. B. Peacock, Pensions Officer, Treasury Board.

I will ask Mr. Clark to open the proceedings by explaining the bill.

Mr. H. D. Clark, Director, Pensions and Insurance Division, Treasury Board Secretariat: Mr. Chairman, this bill is a relatively simple one in so far as pension plans are concerned in that it is designed to provide a lieutenant governor with a pension equal to 30 per cent of his or her average salary over the last five years of service as a lieutenant governor. Towards that pension the lieutenant governor is called upon to contribute a basic 6 per cent of his or her salary, and an additional one-half of one per cent in respect of the pension escalation provision. This, incidentally, is the same rate at which honourable senators are called upon to contribute towards their pensions.

The bill would give present lieutenant governors the right to elect to contribute under the act in respect of prior service in order to make up the five years' contributions required for benefits. In other words, a lieutenant governor who had already served in the office for five years prior to the coming into force of this act could immediately pick up that complete prior service and, if he so chose, be entitled to a pension immediately, or he could opt for a shorter period, depending upon his prospective term of office, bearing in mind he or she must have contributed for five years before being eligible for benefits.

It is also open to a lieutenant governor who does not wish to participate in the plan to elect, within a limited period of time, not to do so.

Those provisions, I might say, are based generally on the provisions applicable to the Diplomatic Service (Special) Superannuation Act, which has provided over the last 28 years for the so-called non-career diplomat, who is often appointed from the Canadian public at large at more or less the same stage in his or her career as are the lieutenant governors.

Those are the main features of this bill, apart from adding that widows' benefits are also provided, as in the other plans to which I have referred.

The Chairman: Thank you, Mr. Clark. Are there any questions?

Senator Flynn: I think the Senate was unanimous in approving the idea of providing former lieutenant governors with a pension. I suppose this is not a question I should put to Mr. Clark, and he does not have to answer it. Why did they select the system provided for diplomats rather than the one provided for the Governor General? I do not expect an answer to that, but it seems to me that there is quite a difference, in that the Governor General does not contribute and is entitled to a pension after he has served one year, or his widow is after he has served only one year; if he became disabled he would receive a pension if he had served only one year. That is the first thing I want to point out to the committee, and I am not asking for Mr. Clark's comments.

Secondly, if I understand the bill correctly, a lieutenant governor who may have been replaced since October 11, when the bill was first tabled in the House of Commons, is not provided with a pension under this bill. It applies only to those who are in office at the time of the coming into force of the bill.

Mr. Clark: That is correct.

Senator Flynn: Do you know of any lieutenant governors who have been replaced or have died since October, 1974?

Mr. Clark: I know that just about the time or just after the bill was given first reading the Lieutenant Governor of, I think, Prince Edward Island died.

Senator Flynn: His widow will not be provided with a pension under this bill?

Mr. Clark: This bill would not apply.

Senator Flynn: If any lieutenant governor dies before royal assent is given to the bill the pension would not be paid to his widow, or if he were replaced before the coming into force of the bill he would not be provided with a pension.

Mr. Clark: Not under the bill as it stands; that is correct.

Senator Flynn: Of course, lieutenant governors who had been replaced before October 11 are not provided with a pension at all.

Mr. Clark: That is correct.

Senator Flynn: The main point is whether a lieutenant governor who was in receipt of another pension under applicable federal legislation, such as a former member of

the house or otherwise, would not be entitled to receive that other pension.

Mr. Clark: Under bill C-52, which is still before the House of Commons and which one would expect to be before the Senate within not too many weeks, contains a provision that would permit the payment of a pension under the Members of Parliament Retiring Allowances Act to a lieutenant governor while he is serving.

Senator Flynn: I checked Bill C-52 and I could not find this provision. Is it only an intention to amend the bill or are you able to give us the exact reference?

Mr. Clark: It is in the bill at the moment, although I agree it is not completely obvious. I am afraid I did not bring the bill with me. It is the elimination of the particular section or subsection in the present act that provides for the present abatement, as it might be called.

Senator Flynn: I think the provision in the present legislation is that this pension is not payable to anyone in receipt of another salary or pension from the federal treasury.

Mr. Clark: That is correct.

Senator Flynn: You are abrogating this provision?

Mr. Clark: That is correct.

Senator Croll: I am just wondering what you are saying.

Senator Flynn: The present legislation says that no pension to a former member of Parliament under the legislation applicable shall be paid if that person is in receipt of another payment from the Treasury.

Senator Croll: If he is in the Senate.

Senator Flynn: In the Senate or otherwise

Mr. Clark: Senator Flynn mentioned members of Parliament.

Senator Croll: That is wrong.

Senator Flynn: Former members of Parliament.

Senator Croll: I see. That is the difference. Otherwise Senator Bourget and I would be in for some money right away.

Senator Flynn: Agreed.

Senator Croll: But we are not.

Senator Bourget: I should like to ask a supplementary question on that, because it is not clear. When this bill was before the committee of the other place one member asked this question:

Mr. Chairman, when the present Lieutenant Governor of New Brunswick retires, he will no doubt have the right to the lieutenant-governor's pension benefits, yet that will not prevent him from receiving pension benefits accorded to members of Parliament.

Mr. Chrétien, who was then the minister in charge, said, "Absolutely not". Then a member said: "At the present time, yes," and he referred to Bill C-52. Suppose Bill C-23 is accepted, receives royal assent and is in effect, if Bill C-52 is not passed would a lieutenant governor who has been a member and is entitled to a member of Parlia-

ment's pension be entitled to receive his pension as lieutenant governor and as an ex-member of Parliament?

Senator Flynn: If Bill C-52 is not passed.

Senator Bourget: That is it.

Mr. Clark: If Bill C-52 is not passed—

Senator Flynn: And until it is passed.

Mr. Clark: —and until it is passed it would not be possible to receive the member of Parliament's pension while he is lieutenant governor, but once he ceases to be lieutenant governor there is no barrier.

Senator Bourget: No barrier?

Mr. Clark: No.

Senator Bourget: I suppose it is the same for Senator Croll and myself, who have been members of Parliament and are entitled to that pension but are not getting it now because we receive a salary as senators. If we were to retire tomorrow would Senator Croll and myself be entitled to get our pensions from the Senate and also from the House of Commons?

Mr. Clark: That is correct.

Senator Croll: Escalated.

Senator Bourget: Yes, escalated.

Mr. Clark: Escalated, yes.

Senator Bourget: A member raised this question in the committee of the other place and I was not quite sure how to answer Senator Flynn when he asked me that. I remember that at a previous meeting, I think a caucus meeting, when you were a witness, you told us that we would be entitled to the two pensions when we retired.

Mr. Clark: That is correct.

Senator Fournier: I should like to clarify the situation in my own mind. From now on somebody who has been a member of Parliament and a lieutenant governor will not be entitled to receive two pensions?

Mr. Clark: Yes, he would be entitled to receive both pensions after he ceases to be lieutenant governor.

Senator Fournier: He will be entitled to two of them?

Mr. Clark: That is correct.

Senator Fournier: In spite of Bill C-52?

Senator Flynn: Not in spite of, because of.

Mr. Clark: That is correct.

Senator Fournier: He will receive two pensions?

Mr. Clark: He would be able to receive two pensions.

Senator Fournier: From the same source?

Mr. Clark: From the Consolidated Revenue Fund, yes.

Senator Fournier: There is no other regulation forbidding that?

Mr. Clark: No. The advantage Bill C-52 will give will be to permit him to receive his member of Parliament pen-

sion while he is still lieutenant governor. That is the real change that Bill C-52 brings about.

Senator Flynn: Why is he not entitled to get his pension as a former member of Parliament? I think that question was once before the courts some years ago with respect to a former Lieutenant Governor of Quebec, Mr. Carroll, who was entitled to a pension as a former judge of the Appeal Court of Quebec. I think the case went before the Exchequer Court, and I am not too sure that he did not win at that time. Was there any change in the legislation following that judgment?

Mr. Clark: There have been changes in the Judges Act and it would be in the Judges Act.

Senator Flynn: That would have prevented the payment of the judges' pension to lieutenant governors?

Mr. Clark: That would be the operative statute, that is correct.

Senator Flynn: I see.

The Chairman: Could we have a couple of points cleared up? The present lieutenant governor, a former member of Parliament, if he retires or if he dies before Bill C-52 becomes law, he is out of luck and his widow is out of luck?

Mr. Clark: That is correct.

Senator Norrie: She does not get anything at all.

Senator Bourget: She would be reimbursed.

Mr. Clark: He would not have contributed. He would not have made any contributions. He would have whatever benefit came from the Members of Parliament Retiring Allowances Act, of course.

The Chairman: His widow would get that benefit. Now, assuming that he does not die and he lives on, he serves out five years as lieutenant governor, and in addition he has had 10 years as a member of Parliament; does he get credit for 15 years?

Mr. Clark: Not under one plan.

The Chairman: He gets 10 under one and five under the other?

Mr. Clark: That is correct.

The Chairman: So, there are two separate pensions?

Mr. Clark: Yes, that is right.

Senator Flynn: Well, what we have to hope is that Bill C-52 is adopted quickly.

Mr. Clark: It is scheduled, I think, for second reading.

Senator Flynn: It has been there for a long time.

Mr. Clark: Yes.

Senator Flynn: It would be fairer, I think, if it applied to all former lieutenant governors. I am thinking especially of the case which you mentioned, that of the former lieutenant governor of Prince Edward Island. He died after, as I understand, October 11, the tabling of this bill, and his widow will not be in receipt of anything.

Senator Inman: Last year.

Senator Flynn: Yes. I think that could be corrected by a \$1 item in the estimates. Would that be a solution that you would propose, Mr. Clark?

Senator Croll: I understand that Bill C-52 is on the immediate agenda there. They discussed it this morning.

Mr. Clark: It is scheduled for tomorrow, I believe.

Senator Croll: I understand Mr. Sharp to say they were dealing with immediately.

Senator Bourget: Bill C-52, yes. I do not know what the urgency is.

Senator Croll: I do not remember what the urgency was but I remember his saying that he was pushed by someone.

The Chairman: Senator Flynn asked why you modelled it on the diplomatic service rather than governors general. Did you do any research to find out the average term of lieutenant governors?

Mr. Clark: Five years is the normal term, subject to extension.

The Chairman: Some remain for ten years.

Mr. Clark: That is right.

Senator Flynn: Lieutenant Governor Lapointe was appointed in 1966.

Senator Bourget: It will be ten years next year.

The Chairman: How will he be affected? He will have a very small pension from Parliament.

Senator Flynn: That is one other point which we may raise, the fact that it is based on the last three years—

Senator Croll: Five years.

Senator Flynn: The last five years but in fact, since the lieutenant governors have received an increase in salary from \$20,000 to \$35,000, most of them who are actually in office will get a pension of about \$7,000 at the most. Is that correct, Mr. Clark?

Mr. Clark: Well, the maximum would be 30 per cent of \$35,000 or \$10,500. If they served five years that is what it would be. Of course, as you say, it would be less for those with shorter periods of service.

Senator Flynn: It could have been based on the present salary.

Mr. Clark: Yes, it could have been.

Senator Flynn: I know it is not a problem for you, but I am just mentioning this to underline the deficiencies of the legislation.

The Chairman: It is unfair in that particular case.

Mr. Clark: I suppose one can only say that a senator who ceases to be a senator this year, instead of having another five years, will get a substantially smaller pension than a senator who has another five years. There is a similarity.

Senator Flynn: You are touching on a point about which I would like to ask a question. Will these pensions be subject to an increase following the cost of living index?

Mr. Clark: Yes, they will.

Senator Flynn: If I understand correctly, for a senator who retired five years ago, the \$8,000 has been increased according to the cost of living index?

Mr. Clark: That is correct.

Senator Flynn: Whereas if a senator retired today he would start at \$8,000?

Mr. Clark: Until Bill C-52 is passed.

Senator Flynn: Is that corrected by Bill C-52?

Mr. Clark: Bill C-52 will substantially change that.

Senator Flynn: So that the pension that you will receive after Bill C-52 is adopted will have been adjusted up to the present year, with the cost of living index?

Mr. Clark: It is more than adjusted.

Senator Flynn: I am not speaking of the \$16,000. What I am speaking of is, it is more than adjusted because you get two-thirds, as far as the senators are concerned, but I am just thinking of the fact that if a senator retired last year, for instance, he gets less than a senator who retired ten years ago.

Mr. Clark: Yes, that is so.

Senator Inman: Why is that?

Senator Flynn: The pension is adjusted to the cost of living index, whereas the one who resigns now starts at the bottom, and his pension will be adjusted—

Senator Inman: To ten years ago?

Senator Flynn: Ten years ago plus the increase in the cost of living index makes quite a difference.

Senator Croll: The salary was less too.

Senator Flynn: It has not changed as far as senators appointed before 1965.

Senator Croll: How far back do you escalate?

Mr. Clark: It goes right back to 1952. It goes back, really, indefinitely for anyone who has one of these pensions but the maximum adjustment is from 1952.

The Chairman: Are there any further questions?

Senator Flynn: No, I guess not.

Senator Smith: I am still just a little confused about the effect of Bill C-52 on the future pension prospects, particularly for two people whom I have seen around Ottawa for quite a long time. I thought from what had been said here, in one way or another, that if Bill C-52 passed it would solve the problem of the present Lieutenant Governor of the Province of Quebec and the Province of New Brunswick.

Senator Croll: No.

Senator Bourget: No, it would not.

Senator Smith: It would not, I am told by one of my colleagues. Could you straighten me out on that?

Mr. Clark: The effect that it will have on them is that so long as they continue to be lieutenant governors they will be able to receive their parliamentary pensions, in addition to their salaries as lieutenant governors. This is one of

the things which they were seeking, and to that extent it would assist them.

The Chairman: That is not a great deal of benefit, is it, because a lot of that will go back in taxes, will it not?

Senator Croll: Everything goes back in taxes!

The Chairman: If he is getting \$35,000 and he gets, say, a \$5,000 pension, \$40,000; so actually he is only getting perhaps a \$2,500 pension.

Senator Flynn: That would be the case, in any event.

Senator Croll: That is better than what he is getting.

The Chairman: But when he retires he is limited to the pension he gets under this plus, in one particular case, a small pension from the House of Commons because of the short term of service since the pension became available.

Senator Smith: If these two holders of the office of lieutenant governor continue to stay in office for even a few more years, would they then pick up their eligibility for the lieutenant governor's pension?

Mr. Clark: For five years they would qualify for the maximum. They can qualify for a pension now, but it is not as large as it would be after five years.

Senator Smith: Five years from the date we mentioned before?

Mr. Clark: That is correct.

The Chairman: What is the minimum pension?

Mr. Clark: \$20,000 is the former salary of the lieutenant governor in Quebec, so it would be 30 per cent of that, \$6,000, which would be the minimum, but since he has already had a certain period of time at the \$35,000 level he would start at somewhere in excess of \$6,000, and each month it would get closer to the maximum of \$10,500.

Senator Bourget: In the case of the lieutenant governor in Quebec, suppose he retired next year after ten years in office, he would still only receive \$6,500 or \$6,700; that is, four-fifths of \$20,000 plus one-fifth of \$35,000.

The Chairman: Which is a small pension.

Senator Bourget: When the bill was before the committee in the other place the minister said, "Let's pass the bill now, and we may have a chance to look at it later on." I wondered if in our report we could put in a recommendation asking the minister responsible, or the cabinet, to have another look at these two cases.

Senator Flynn: It is not only those two cases, Senator Bourget. It would apply to them all, in fact. The recommendation of the committee should be that the committee considers that the bill is not too generous and that some adjustments should be made. That is really the case, because it does not affect only Mr. Robichaud and Mr. Lapointe, because with respect to the pension payable under this act they are all put on the same basis. What is especially important to them is the fact that they will be in receipt of their pensions as former Members of Parliament as soon as Bill C-52 is enacted.

Senator Croll: That was of considerable advantage and is exactly what they wanted, as I understand it. Let us not mess that up for them. The government went some distance in helping them out by allowing them to take the

additional pension. I think we had better let it be for the time being.

The Chairman: Once we have passed the bill we can draft our own recommendation, if you like.

Senator Flynn: We might also mention the case of the former lieutenant governor of Prince Edward Island, whose widow is not in receipt of a pension although the bill was tabled on October 11, 1974, because this bill is not retroactive to the date of its tabling, as is often the case.

Mr. Clark: Certain features are retroactive, actually, but what you say is true.

The Chairman: We can have a sub-committee draft the report after we have passed the bill.

Senator Croll: I think it would be more effective if the sponsor of the bill and the seconder were to make strong statements in the house. Once that was on record it could be brought to the attention of the minister, but as for our report, I doubt if anyone will read it.

Senator Flynn: That is a good point. Mr. Chairman, since it is not in our capacity to improve the bill, I move that we report it without amendment.

The Chairman: Is it agreed, honourable senators?

Hon. Senators: Agreed.

The Chairman: Thank you very much, Mr. Clark and Mr. Peacock.

Senator Bourget: Just before we adjourn, Mr. Chairman, I would suggest that you, Senator Flynn and I get together to discuss the form our recommendation will take.

The Chairman: All right.

The committee adjourned.

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FIRST SESSION—THIRTIETH PARLIAMENT
1974-75

THE SENATE OF CANADA

PROCEEDINGS OF THE
STANDING SENATE COMMITTEE ON

HEALTH, WELFARE AND SCIENCE

The Honourable CHESLEY W. CARTER, *Chairman*

Issue No. 10

WEDNESDAY, NOVEMBER 19, 1975
THURSDAY, NOVEMBER 20, 1975

Complete Proceedings on Bill C-25, intituled:

**“An Act to protect human health and the environment from
substances that contaminate the environment”**

REPORT OF THE COMMITTEE

(Witnesses: See Minutes of Proceedings)

THE STANDING SENATE COMMITTEE ON
HEALTH, WELFARE AND SCIENCE

The Honourable C. W. Carter, *Chairman*

The Honourable M. Lamontagne, P.C.,
Deputy Chairman.

AND

The Honourable Senators:

Argue	Inman
Blois	Langlois
Bonnell	Macdonald
Bourget	McGrand
Cameron	Neiman
Croll	Norrie
Denis	*Perrault
*Flynn	Phillips
Fournier	Smith (<i>Queens-Shelburne</i>)
(<i>de Lanaudière</i>)	Sullivan—(20)
Goldenberg	

**Ex officio* member

(Quorum 5)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate of Wednesday, 12th November, 1975:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Macnaughton, P.C., seconded by the Honourable Senator Cook, for the second reading of the Bill C-25, intituled: "An Act to protect human health and the environment from substances that contaminate the environment".

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Macnaughton, P.C., moved, seconded by the Honourable Senator Connolly, P.C., that the Bill be referred to the Standing Senate Committee on Health, Welfare and Science.

The question being put on the motion, it was—
Resolved in the affirmative."

Robert Fortier,
Clerk of the Senate.

Minutes of Proceedings

Wednesday, November 19, 1975
(13)

Pursuant to adjournment and notice, the Standing Senate Committee on Health, Welfare and Science met this day at 3:42 p.m., the Chairman, the Honourable Senator Carter, presiding.

Present: The Honourable Senators Bonnell, Bourget, Carter, Croll, Denis, Fournier (*de Lanaudière*), Macdonald, Neiman and Smith (*Queens-Shelburne*). (9)

The Committee proceeded to the consideration of Bill C-25, intituled: "An Act to protect human health and the environment from substances that contaminate the environment".

The following witnesses were heard in explanation of the Bill:

From Environment Canada:

Dr. J. E. Brydon, Director,
Environmental Contaminants Control Branch;
Mr. C. S. Alexander,
Legal Advisor.

From Health and Welfare Canada:

Dr. Peter Toft, Chief,
Environmental Standards Division,
Bureau of Chemical Hazards.

Dr. Brydon made an opening statement; the witnesses then answered questions put to them by Members of the Committee.

After discussion, it was agreed that further consideration of the Bill be postponed until Thursday, November 20, 1975 at 11:30 a.m.

Thursday, November 20, 1975
(14)

Pursuant to adjournment and notice, the Standing Senate Committee on Health, Welfare and Science met this

day at 11:37 a.m., the Chairman, the Honourable Senator Carter, presiding.

Present: The Honourable Senators Bourget, Carter, Croll, Denis, Fournier (*de Lanaudière*), McGrand, Neiman and Smith (*Queens-Shelburne*).

Present but not of the Committee: The Honourable Senator Macnaughton.

In attendance: Mr. R. L. du Plessis, Acting Assistant Law Clerk and Parliamentary Counsel.

The Committee resumed consideration of Bill C-25, intituled: "An Act to protect human health and the environment from substances that contaminate the environment".

The following witnesses were again heard in explanation of the Bill:

From Environment Canada:

Dr. J. E. Brydon, Director,
Environmental Contaminants Control Branch;
Mr. C. S. Alexander,
Legal Advisor.

From Health and Welfare Canada:

Dr. Peter Toft, Chief,
Environmental Standards Division,
Bureau of Chemical Hazards.

Mr. Alexander made an opening statement; the witnesses then answered questions.

On Motion of the Honourable Senator Croll, it was *RESOLVED* to report the Bill without amendment.

At 12:15 p.m., the Committee adjourned to the call of the Chair.

ATTEST:

Patrick J. Savoie,
Clerk of the Committee.

Report of the Committee

Thursday, November 20, 1975

The Standing Senate Committee on Health, Welfare and Science to which was referred Bill C-25, intituled: "An Act to protect human health and the environment from substances that contaminate the environment", has, in obedience to the order of reference of Wednesday, November 12, 1975, examined the said Bill and now reports the same without amendment.

Respectfully submitted,

Chesley W. Carter,
Chairman.

The Standing Senate Committee on Health, Welfare and Science

Evidence

Ottawa, Wednesday, November 19, 1975

The Standing Senate Committee on Health, Welfare and Science, to which was referred Bill C-25, to protect human health and the environment from substances that contaminate the environment, met this day at 3.42 p.m. to give consideration to the bill.

Senator Chesley W. Carter (*Chairman*) in the Chair.

The Chairman: Honourable senators, we have two items of business, the first of which is Bill C-25. The bill is not controversial and I do not think we will take very long in dealing with it.

We have as our witnesses today: from the Department of the Environment, Dr. J. E. Brydon, Director of Environmental Contaminants Control Branch, and Mr. C. S. Alexander, Legal Advisor; and from the Department of National Health and Welfare, Dr. Peter Toft, Chief, Environmental Standards Division, Bureau of Chemical Hazards.

I will ask Dr. Brydon if he has an opening statement to make.

Dr. J.E. Brydon, Director, Environmental Contaminants Control Branch, Environment Canada: Thank you, Mr. Chairman, I have a short statement to make, if I may.

The bill, as many of you are aware, is designed to deal with the trace concentration of chemicals in the environment. In some quarters it has been called a disease of the twentieth century because of the problem of the chemical being, shall we say, released into the environment today, being disseminated in the environment and coming back to haunt us in delayed fashion in the future.

The second insidious part of the problem with such chemicals is that they may not show a direct serious effect at the time they are released or accumulated in the human body, or in the bodies of birds or wild life. The biological effect, the chemical effect, may show up a long time in the future. It is a difficult problem to deal with scientifically or medically, and it is that problem that the original government task force tried to deal with in deriving the precursor to this bill. This was some years ago.

The bill as it now stands has gone through a number of revisions. We think it has been improved immensely by discussions with the various people we have talked with from the provinces, from industry, biologists, other governments departments, and not the least contribution has been the discussion in Parliament.

The bill really has two parts to it. The first part deals with the derivation of information. It empowers the Ministers of National Health and Welfare and of the Environment to conduct investigations, not in just a scientific way but also in a detective way, to ask for information, to require people to supply information. On top of that, in

clause 4 there is power for the minister to require that industry undertake appropriate tests, and, of course, supply information on use, distribution, production, chemical reactions, disposal practices and a host of similar things. That is the investigative part of the bill.

There is provision for consultation with other departments and the provinces. During and following the investigative part, when some decision has been made collectively action may be required to control a chemical by a variety of means. The consultation feature allows the federal government to find out whether, in fact, action to remove the hazard that such a chemical poses would be removed by action under another law, either federally or provincially. Having taken that step, the federal government then has the power to schedule the substance in question and introduce regulations under this bill to control its manufacture, import, release and use.

Finally, of course, there are the inspection and enforcement provisions in the latter part of the bill.

That is a rather quick summary of the background features of the bill. Perhaps, Mr. Chairman, I will leave it at that.

The Chairman: Thank you very much, Dr. Brydon.

Dr. Toft, do you have anything to add to what Dr. Brydon has said?

Dr. Peter Toft, Chief, Environmental Standards Division, Bureau of Chemical Hazards, Department of National Health and Welfare: I think Dr. Brydon has given a very good summary. I have nothing to add, unless there are any questions.

Mr. C. S. Alexander, Legal Advisor, Environment Canada: I think it would probably be easier to answer questions rather than say any more. Dr. Brydon has, I think, given a good capsule of what the bill is supposed to be about—information gathering and then subsequently the preventive powers if it becomes necessary to use them. It would perhaps be easier for us if you were to direct questions, which we will try to answer.

Senator Croll: How, under the bill, do you deal with a reluctant province? You have already experienced that, I think. Suppose one does not agree with your views or does not think you are proceeding on the right course and says, "No," what do you do? Of course, there is the consultation.

Mr. Alexander: There is. Perhaps I might try to answer that briefly by explaining that during our consultations with the provinces one of the things they were most concerned about was that we would attempt to deal with release. In the information gathering process it is necessary to try to identify where the controls should be exercised. When I refer to controls, I do not necessarily mean legislative controls at this point, because if these things are

dealt with on a voluntary basis it will never reach the point of a significant danger requiring regulations in order to arm the various offences created by the bill.

We have had discussions with the provinces on the question of release, and they said that release is really essentially a matter that can be dealt with by the provinces and we should not get into this. Basically our answer was that we hope we will never have to get into the release situation, but if there is a significant danger, and of course it has been identified, we must have power to deal with it should it become necessary. Nevertheless, the reason for having provisions for consultation with the provinces is because it is recognized that a certain problem may be merely local in extent. For example, because of the concentration of industry in, say, Hamilton, the province may want to deal with it, but it may not be a significant danger to the entire area. It is hard to talk in abstract terms, but this is the type of situation we envisage. The control powers under the bill are intended to be residuary to the extent that they will be used only if it becomes necessary to exercise them as a result of the information and what has been found out.

Senator Croll: Your control comes under the regulations?

Mr. Alexander: The provision for making regulations is in clause 18. These regulations would arm the various offences created by clause 8.

Senator Croll: I was looking at clause 5 and clause 8.

Mr. Alexander: Clause 5 has to do with consultation.

Senator Croll: Yes. Clause 8 is offences. Is it within your authority to identify an offence within a province? Is your jurisdiction clear here?

Mr. Alexander: So far as the jurisdictional aspect of the matter is concerned this, of course, was gone into, and, basically, we can say that the jurisdiction with respect to environmental contaminants, if we want to look at it in narrow terms, is the criminal law. In rather broader terms, environmental contaminants know no boundaries. If you are looking at it from the broader justification from the jurisdictional point of view you can say that it is really a matter of national and even international concern that these chemical substances and the dangers posed by them be identified and that controls be put in to prevent them from creating these hazards.

Senator Croll: What relief is there for the industry and what is the timing for the industry? After all, industry takes the position that it will take a long time—years—and will be extremely costly. What can you tell industry with respect to the timing under the act?

Dr. Brydon: There is no provision in the act specifically for that. That is a matter of negotiation between the Minister of the Environment and industry, and it would be taken into account in any cost-benefit analysis which might be done.

If a regulation is a hardship upon industry and if it feels it is incorrect, then industry has the right, under clause 6, to the formation of a board of review to hear the case with respect to proposed regulations to determine whether they are in fact appropriate or workable or whether they will meet the danger that is perceived.

Senator Croll: I understand the board of review consists of three people. Does that include representatives from both sides? Under the bill you appoint three people to the board. Does the manufacturer or plant owner have any representatives on the board to see him through it?

Mr. Alexander: Senator, this matter came up before and there was an idea that the board of review should be an antagonistic type of board in that there would be representatives of different people on it.

The conclusion was reached that what is really required of a board of review is to have people on it who are able to exercise objective judgment. In other words, they must be able to determine whether the potential hazards have been properly identified and whether the government's proposed measures will be sufficiently stringent or too stringent. Basically, the board of review only comes in when the point is reached where the Ministers will propose to the Governor in Council that regulations should be enacted in order to control these things. There is a kind of escalation in this bill. It starts off with clause 3 dealing with information. This only provides for the departments to gather information. If it is necessary, information can be gathered on a voluntary basis using world wide resources and local resources and anything else. It may never be necessary to move to the next stage, which is the compulsory disclosure stage.

It is at that stage that industry may be compelled to undertake tests and do things which you rightly categorize as expensive. Subsequently, as a result of these tests, there may or may not be a decision to make a recommendation to the Governor in Council that regulations be enacted to arm the various offences in order to deal with the problem identified, bearing in mind that there are three kinds of situations where regulations could be made. One would be to control releases directly; another would be, for example, to prevent substances from being sold or manufactured for certain purposes; the third would be to prevent substances from being used in certain areas where a problem has been identified. For example, PCBs could present some problems. Perhaps Dr. Brydon could comment on this.

Dr. Brydon: The PCB situation has been with us for about five years. The Monsanto company recognizing the environmental problems, limited sales unilaterally in 1972 of the PCBs to certain electrical installations. That was the philosophy at that time and it seems to have worked quite well. In other words, it was to shut off all dispersive uses—inks, plasticizers, flame retardants and that kind of thing which ultimately do get into the environment, and to limit the PCBs to electrical installations where they are enclosed and can be recycled.

Recently there was evidence that there is an increasing problem with PCBs and it is not known now whether it is a hold-over from previous use four years ago or whether it is a problem with us today and needs further controls today.

We have a situation, therefore, where we need to bring in regulations in order to limit the use of PCBs to controlled uses, and we have to examine the situation further and perhaps eliminate the use of PCBs altogether. We have to examine the situation of unknown leakage of the manufacturing of electrical equipment. All of these things require investigation and information gathering which we anticipate doing when the act is proclaimed.

Right at this moment we intend to bring in regulations to limit the use of PCBs to certain products and to study

and examine further the situation in order to determine if, in fact, there are further restrictions required.

The Chairman: For the record, could you explain what PCBs are?

Dr. Brydon: PCB is the short name for polychlorinated biphenyls. It is a complicated organic compound. If you, Mr. Chairman, wished to design a good chemical for a variety of uses you would be likely to come up with, PCBs. It has a high boiling point. It does not decompose. It is stable. At the time it was discovered it had no direct health effects. Subsequently, it was found to have delayed action effects in certain eco-systems, certain parts of the environment, fish and fish-eating birds. More recently, a delayed action problem has been found with the human health and I should let Dr. Toft describe that. But this is a classic situation. PCBs were, in fact, one of the development of the nature of the features in the act to describe an investigatory and control system.

You, Senator Croll, inquired about the provinces and Mr. Alexander mentioned release. Really what this bill was designed to do in the initial instance is described in clause 8(4):

No person shall import, manufacture or knowingly offer for sale a product that contains a substance . . .

It is the composition of products at which the controls in this bill were aimed. The release feature was put in to provide part of the umbrella effect of the act. There are other acts which can be used to control release. There may be gaps, there may be holes. That release feature was put in to cover those gaps and holes.

Senator Neiman: Mr. Chairman, I wonder if the witnesses could explain to me how this act improves upon the previous situation which must have obtained over the last few years with respect to any type of legislation with respect to mercury. How did you reconcile your jurisdictions with Ontario, for example, with which I am most concerned at this point? I understand that the Department of National Health and Welfare has known for some years that mercury was having serious adverse effects in certain areas. I still do not understand where the jurisdiction lies and how this bill will improve the situation. We read in the newspaper how the Government of Ontario says that it is a federal responsibility and yet the federal government, so far as I know, has not made many statements about the subject. Can you tell me what has happened in the past and how you feel this might improve that type of situation?

Dr. Brydon: May I make one comment and then perhaps Dr. Toft would speak about the medical aspects of mercury. One point I should like to make is that it is not many years ago that it was discovered that mercury could be converted naturally into the methylmercury form, which is the form that has been causing the problem. So there is a piece of new information which was found at a certain time.

Senator Neiman: How long ago was that?

Dr. Brydon: That would be five or six years ago.

Senator Neiman: I thought Japan knew about it before then.

Dr. Brydon: They had the problem with mercury in the bay, Minamata disease, but at my knowledge it was not

then shown that the methylation process was causing the problem.

All I am saying is that this act could not have caught that problem due to the fact that the scientific information was not available. If this act had required the testing of mercury some years ago methylmercury would not have been spotted.

Senator Bourget: Was that fact not brought out at the international conference of the United Nations in Stockholm two or three years ago?

Dr. Brydon: Yes.

Senator Fournier: Did you attend?

Dr. Brydon: No.

Senator Bourget: Mr. Chairman, I was interested in the question of jurisdiction, because that might create some problems. In your discussion with the provincial governments, was any objection raised or did you have their complete co-operation?

Mr. Alexander: If I may respond to that, in respect of jurisdiction, first of all we have had federal efforts to deal with mercury. For example, the chlor-alkali regulations were enacted pursuant to the Fisheries Act because of the effect mercury has on waters frequented by fish. That is an example of the power Parliament in relation to Fisheries which could be used to deal with the problem under a specific head of jurisdiction.

Previous efforts to deal with these environmental contaminants have been really when situations have been exposed. In other words, we have attempted to come up with a cure rather than prevention.

This bill looks at matters from a totally different point of view. We are not trying to say in this bill that we are going to try to control everything and take it away from the provinces. We do not want that. That is the last thing we want to do. It would be a total disaster. I think this bill makes it clear that we are not trying to occupy the field. It would be a complete disaster if it were to be said that the federal government had occupied the field so as to prevent the provinces from dealing with a problem which was a local one and obviously required special solutions.

When you look at this bill which was specially designed with that in mind, it cannot be said that the federal government is occupying the field and therefore putting the provinces out.

We want the provinces to deal with the problem. Furthermore, if the problem is identified as being one which, for example, happens to be in pest control products, then that is something that could be dealt with under a federal statute, namely, the Pest Control Products Act.

When the problem has been identified you see where you have to try to stop it; in other words, should it be a ban on importation or sale or should it be a ban on the use of a particular product or on release or control with respect to disposal. Then the place where that control might be put in, if it has to be put in by regulation, could be under another piece of legislation which might be federal or provincial.

As I said, the idea of the controls under this bill is that they are to be residuary, where there is a significant danger and it looks as though it can only be dealt with by a regulation under this particular bill. So that is what I

would say with respect to jurisdiction, and the provinces, basically, agree. It is true that we had arguments with them, especially on releases, as I mentioned before, because they felt that this was something they should deal with. Our answer was, "Yes, we agree, you should be dealing with them, and we hope you will, but we must have power under the bill, if there is a significant danger, to deal with it if the problem has not been dealt with".

Senator Croll: Explain this to me, then. You probably know better, doctor, what authority the City of Toronto Board of Health had in taking the action that they did in the courts for months and months, in order to impose upon a body there downtown.

Mr. Alexander: On the lead thing?

Senator Croll: Yes. By what authority did the city deal with that? It was not the province; the province stayed out of it, as I recall. It was the city. The board of health, under some authority they said they, had, took the thing to court.

Mr. Alexander: If I may say so, I do not know about the city, but I do know about the Ontario Act, where there are two sections that apply. One would be a statutory bar in respect to emissions, in section 5. I cannot remember how it reads, unfortunately. The other was where a stop order was issued under section 7, and that went to court, where they failed to establish, as I recall—it was a couple of years ago—that there was a danger to public health. I think the problem was the way the province approached it.

This other matter, as I understand it—and I only know what I read in the papers—was before the Ontario Municipal Board, and they are trying to establish certain regulations with respect to this metal company, which is really a secondary lead smelter, I think, is it not?

There was evidence, or rather, not evidence, but allegations, that it was bad for children, or something, who were attending a school close to the refinery.

Senator Croll: That is right.

Mr. Alexander: You mean, what is the jurisdiction of the province to deal with that? Civil rights?

Senator Croll: Emanating from the city, not from the province.

Mr. Alexander: I assume the city would have delegated powers under its charter from the province, and I suppose the jurisdictional competence would be under the heading of property and civil rights, or matters of a local nature. If a problem is provincial or national it may well be local as well, and may well be a matter of civil rights within a province. In other cases it may be national or international.

Senator Denis: I want to refer to clause 8, paragraph (5), page 12, relating to offences:

(5) Every person who contravenes this section is guilty of an offence and is liable

(a) on summary conviction, to a fine not exceeding one hundred thousand dollars; or

(b) on conviction upon indictment, to imprisonment for two years.

Is two years the maximum, or is it the minimum? It says, "on summary conviction, to a fine not exceeding one hundred thousand dollars". With regard to conviction on indictment it says, "to imprisonment for two years".

Secondly, you cannot put a company or a corporation in prison, so you would have to charge it under (a), which is a summary conviction, and therefore a lesser offence.

Under (b), why do you not put, "on conviction upon indictment, to a fine not exceeding \$100,000, or imprisonment for two years, or both", as we usually read in every bill?

According to this clause, it is impossible to bring a charge against a company under (b) because you cannot put a company in jail. You would therefore have to charge it under (a), which does not include imprisonment.

Mr. Alexander: Senator, obviously you cannot put a company in prison, and that is why, in the discussions before the House of Commons committee it was felt that the \$10,000 that we had in there previously was not sufficient, and was therefore raised to \$100,000.

Senator Denis: But it is not mentioned in (b).

Mr. Alexander: You mean the fine? You mean there is no provision for a fine?

Senator Denis: There is no provision for a fine. There is only mention of imprisonment.

Mr. Alexander: I have had discussions with people in the criminal section of the Department of Justice, who said that under the Criminal Code there is a provision under which, if you can be sent to prison you can also be fined, with no limit set, and I believe that was the reason that there was nothing put in with respect to a fine for a conviction upon indictment.

Senator Fournier: If you will permit me, I am completely of the opinion of Senator Denis, and I thank him for having raised the point. There it says in paragraph (b):

(b) on conviction upon indictment, to imprisonment for two years.

But in most of the cases companies would be involved, and as has been said, and I am sorry to repeat it, you cannot put a company in jail. We should define the responsibility of a company.

Mr. Alexander: There is a provision in clause 14, if you would like to look at it, which attempts to deal with this point where people cannot hide behind the corporate veil, so to speak. This is a provision which has gone into quite a number of pieces of legislation.

Senator Croll: It is in the Income Tax Act.

Senator Macdonald: But then if you look at clause 15 you will see something there which I deplore and which has become all too common in our legislation. It says:

15. In a prosecution of a person for an offence under section 8, it is sufficient proof of the offence to establish that it was committed by an employee or agent of the accused whether or not the employee or agent is identified or has been prosecuted for the offence, unless the accused establishes that the offence was committed without his knowledge or consent and that he exercised all due diligence to prevent its commission.

In other words we are shifting the burden of proof. You are in effect saying, "You are guilty unless you can prove yourself innocent," which is totally against our tradition that a person is innocent unless he is proven guilty.

Dr. Brydon: We have had a number of discussions on this issue, and I think what Mr. Alexander is doing now is getting the formal brief that was prepared at the time we were discussing this very feature with the Canadian Manufacturers Association and also with the parliamentary committee. We have explored this at great length in our discussions.

The Chairman: And you have come to the conclusion that there is no other way to administer the act effectively?

Dr. Brydon: This is the conclusion of the Department of Justice, that they wish to see this feature remain.

The Chairman: Senator Denis, you raised the point about corporations. Are you satisfied that clause 14 takes care of that?

Senator Denis: I am not. I say that, because in order to understand this properly you have to refer to the Criminal Code or to another bill. It should be quite easy to put it in here. But also the witness did not answer me so far as the question of two years was concerned. Does this mean that he could be sent to prison for only one year?

Dr. Brydon: I am no lawyer, but I would interpret the word "liable" in the preceding line as meaning that it can be anything from one day to two years.

Senator Denis: But "liable" applies to (a) also, so why do you put in "not exceeding \$100,000"? If we understand you correctly on (b), then in (a) it should be a fine of \$100,000. Because in (b) you have "to imprisonment for two years."

Mr. Alexander: You are unhappy, senator, because of (b) which says, "on conviction upon indictment, to imprisonment for two years" and you think it should be made clear that it is for a maximum of two years. I think you are probably right.

Senator Denis: It should be "up to two years."

Mr. Alexander: Certainly it was not intended that it should be a mandatory two years.

Senator Denis: But you do not put the term regarding the fine in the same way. Is it more harmful to fine a company \$100,000 than to say to the treasurer who ordered the sale, "You go to prison for one year"? The company at least should be liable to a fine of \$100,000. Because a charge and conviction upon indictment is more severe and more important than it is in (a) which is summary conviction.

Senator Fournier: I share that point of view. A company might use a scapegoat and say to one of the officers, "You go to jail for a couple of years and don't worry," and then the company could skip the whole thing. So I think the company should be liable to the \$100,000—the company and the person responsible.

Mr. Alexander: Well, senator, with reference to the point about "imprisonment for a period up to two years", I do not recall why the words "up to" were left out. There may have been a reason. I do not know. I would like to look into that. But I do certainly agree that there was never any intention that if somebody was found guilty on indictment that he would have to be sentenced to two years. Presumably the route of indictment would be taken because it was felt that the offence was much more heinous and that is the basis on which one should proceed. The other point is as to whether

we should put a provision in there for a fine not to exceed, say, half a million dollars.

Senator Fournier: Or both.

Mr. Alexander: You mean that it would have to be more than \$100,000. Is that what you mean? You have in mind that (b) should be changed to say, "on conviction upon indictment to imprisonment for up to two years or a fine of X dollars or both"?

Senator Fournier: Yes.

Senator Macdonald: You have to watch that you do not make the penalty on the individual more severe than that on the company, which I think is the case that Senator Denis is bringing out now.

The Chairman: Are you agreeable to letting this clause stand until Mr. Alexander can have some consultation on it? Can you do it by telephone, Mr. Alexander, while we are dealing with the other clauses?

Mr. Alexander: Well, I have to talk to my political masters.

Senator Bourget: There is no rush to pass this bill today.

Senator Denis: There is another little point that I should like to raise.

The Chairman: Well, Senator Denis, would you mind? Senator Neiman is next on the list.

Senator Denis: Certainly.

Senator Neiman: On that point alone, I wonder if it should say, in subclause (5) "Every person and corporation" because we don't use the word "corporation".

Mr. Alexander: It is in the Interpretation Act.

Senator Neiman: I should like to go back to the question of jurisdiction with regard to, say, the mercury situation. We know that the Dryden Paper Company has been one of the worst offenders in the area. Under this legislation, if the province does not take action to stop that type of pollution will you be empowered to move in and take action instead? Speaking just as a citizen, it seems to me that the province has been waffling on this and delaying on it for a couple of years. When the province does not go ahead and take some action on contaminants that you have defined, what authority will you have to go ahead and move, or will you have any authority?

Mr. Alexander: The bill contains provision to deal with emergency situations in clause 7(3). Generally speaking this bill requires consultation, because you are gathering information on things. We felt there might be situations such as you have described, where nobody is acting on something and there may be a situation of imminent danger. Therefore, clause 7(3) was inserted, which provides:

Where the Governor in Council is satisfied that a substance or class of substances is entering or will enter the environment in a quantity or concentration or under conditions that he is satisfied require immediate action to prevent a significant danger in Canada...

Then he can act. That immediate action is important, because what is going on may require immediate action to prevent some disaster in two or three years time. It is not

necessarily an imminent hazard, but it is a situation requiring immediate action, either because there is an imminent hazard tomorrow, or if it is not dealt with immediately, what is perhaps more likely, with the nature of the beast with which we are dealing, is that there may be a danger two or three years down the road.

Under those circumstances this bill would, in exceptional circumstances, empower the Governor in Council to move without the necessity of consultation, and without the necessity of publishing in the *Canada Gazette* what he proposes to do. That clause was inserted, called "Emergency," to deal with precisely the kind of thing you have in mind.

Dr. Brydon: With respect to the power, if following consultation in the normal course of events it is found that a province will not take measures to relieve the danger, then the federal government has the power under this bill to move forward and take whatever action the Governor in Council, the Cabinet, decides is required. That is a residual power.

Senator Bourget: It is all right to have jurisdiction under this bill, but what about the BNA Act? What if the province objects? If the province objects you will have to go to court if you do not agree. If you insert into legislation federal authority over a province, it may raise a legal question. I am not a lawyer, but I imagine that could happen.

Mr. Alexander: The difficulty is that quite obviously Parliament is not clairvoyant and does not know what will happen tomorrow. In effect, it has to say it will give certain powers to the Governor in Council. There is a kind of progression in this bill. Under normal circumstances information is gathered, there is then disclosure, and then it may be said, "Here is something that we can see will, if it is not dealt with, become a serious problem five or ten years down the road." Hopefully, whatever is being done to create this danger will be dealt with voluntarily—for example, Monsanto no longer manufacturing PCBs except for certain particular uses. If this cannot be done, it could then be dealt with by whoever is best qualified to deal with it. Only when it reaches a certain point in time—in other words, time has been running and things have not been done—would it be necessary for the Governor in Council to set the mechanism at work to have consultations. There is a provision that he has to have consultations to see if something can be better dealt with under other legislation.

In the normal course of events, if this bill works really well there will be practically nothing on the schedule. I am sure it will not happen in this way, but in the best of all possible worlds it would all be dealt with before it reached the point of significant danger. Then it would be dealt with in the normal course of events only after consultation, but there could be an emergency situation such as Senator Neiman referred to, where something has to be done; therefore, you have to move. That would be where there was a situation of apprehended immediate action being needed in order to prevent this significant danger. I am sure there will be court cases arising out of this bill.

Senator Bourget: I imagine so.

Senator Fournier: This is more a comment than a question. Suppose the government undertakes a prosecution against somebody under clause 8 or clause 15, and the defence base themselves upon another clause. Then the

government will be right and the defence will be right. What will be the outcome? No case. The law must be complete. The law must be applied in such a way that one clause cannot be used against another. We have seen that in Montreal in the case of Dr. Morgentaler. The law was not clear. The defence was based on one article of the code and the defence was based on another article. He was acquitted by the jury and the Appeal Court decided otherwise. No opportunity should be afforded to the government or to the accused to plead on separate clauses. I hope you grasp my meaning.

Mr. Alexander: I do not really know about the Morgentaler case. Wasn't the question whether the judge had applied the wrong article of the code?

Senator Croll: Exactly.

Senator Fournier: There were two articles involved.

Mr. Alexander: I thought the Court of Appeal said that the trial judge had wrongly applied the law. Here we would have a charge. For example, clause 8(2) says:

—no person shall, for a commercial, manufacturing, or processing use prescribed for the purpose of this subsection, import

and so on. The charge would have to be framed to say that on such-and-such a day X imported such-and-such a substance for use as a cutting oil contrary to law. The charge would have to be in accordance with the provisions of the bill. I cannot see how one could wrongly apply the law. We are not dealing with a situation such as would arise under the Criminal Code, which has hundreds of articles. It is unlikely that could happen, I think, if I understand what you have said rightly.

Senator Fournier: With a clever lawyer it might.

Senator Smith: I am a little confused about the consultation aspect. I know there has been some consultation with the provinces in preparation of the legislation, which we normally expect. Has there been any consultation with the class or kind of industries you might expect in the future to be heavily affected as a result of this new legislation?

Dr. Brydon: The preliminary proposals were widely distributed to a number of trade associations. We had some excellent replies from them that went into the development of Bill C-3. In addition, most of the trade associations conceded to the Canadian Manufacturers' Association the responsibility of dealing with us face to face on the bill. We had, I believe, four fairly lengthy sessions with that committee of the Canadian Manufacturers Association. They were of great benefit to us in developing the bill and making sure certain features would work. There were differences of opinion, but that is natural. We expected that and we explored these features at great length.

Senator Smith: You had certain experiences in the past with respect to bills coming over here and to the Commons where organizations of industry had strong, violent reactions to the legislation. We always like to feel that they have been consulted before and during the process of developing legislation. It sounds as though you have done a good job in that respect.

Dr. Brydon: May I add, Senator Smith, that the Canadian Manufacturers' Association did testify at the House of Commons committee and they outlined at that session the

four basic points at issue which we had resolved in our discussions with them.

Senator Smith: I was just coming to that point. I am glad to know that, because I had not read up on what happened in the other place. Can you tell me whether there had been any particular consultation with the pulp and paper industry?

Dr. Brydon: Consultations? No. The association was circulated and we received comments from them on the initial working paper.

Senator Smith: It strikes me that you now have enough law to protect the public interest with respect to effluents and its influence on salt water as well as fresh water streams affected by that industry. They are now paying pretty heavy prices, as you know, to try to do something about the situation. You would have heard from them, because they have a powerful organization. I am satisfied on that point.

On another aspect, can you say whether we are leading in the field or are we falling behind other countries with respect to our industrial stature in the world, bearing in mind that we are now getting into this kind of legislation.

Dr. Brydon: Perhaps I could answer that question yes and no. There are some five countries in the world which have or have on the books legislation similar to this. The first was Sweden. They had a much simpler piece of legislation which is slightly different from Bill C-25 that we have here. Great Britain has one clause in one of its laws which empowers their Secretary of State to take the measures outlined in our clause 8.

France has just introduced a bill. I received a copy of it a week or 10 days ago. So far as I can gather, without having studied it closely, it is similar to the features of Bill C-25. Japan has a bill in operation. They have gone about it in a different way. They have identified all of the 20,000 chemicals used in commerce, and anything beyond that list of 20,000 must go through a simple screening process, after which there are further, longer term tests such as carcinogenesis tests. They are gradually going through the list of 20,000 existing chemicals to identify which ones need restrictions. That is their approach.

The Americans, as you are probably aware, have a toxic substances control bill which has been in the Senate and in the House of Representatives for some three or four years. They cannot get agreement on what features should be in it and they do not have their bill passed yet. My most recent information is that they are not optimistic that they will have one in the near future.

Switzerland has a slightly different approach linked with their food and health laws to a much greater extent, whereas Bill C-25 is concerned with the environment and the indirect threat to human health.

If you ask whether we are a leader, all I can say is that there is no such thing as a leader because this is breaking new ground.

I might add that the Environment Committee of the OECD in Paris has a group studying a mechanism for a multilateral study of chemicals. The philosophy is to try to arrange a method of screening, of testing, which is satisfactory to all countries being too restrictive in one and not enough in another, so that a test requirement in one country could be applicable in another. As I understand it, that

problem exists internationally right now with respect to drugs.

Bearing in mind the huge variety of industrial chemicals and the possibility of having an advantage for one company in one country with more simple testing requirements than another, it is the objective of the committee I serve on to try to develop a more harmonized approach to the testing of chemicals.

If I can go back to my statement, then, I do not think there is a real leader. Our approach is one of half a dozen.

Senator Smith: It sounds like you have taken a pretty good step.

Dr. Brydon: It is certainly nothing to be ashamed of.

Senator Croll: Can you tell me how the United States, without an act, seems constantly to be talking about the steps they are taking—and I understand they do take steps—to clear up the environment? The United States seemed to be able to do it without any particular act that it can point to.

Dr. Brydon: I hesitate to discuss the problems of jurisdiction in the United States and which authority has the legislative power to control, say, the PCB's or fluorocarbons. There are two bills before Congress right now, one dealing specifically with the PCB problem and the other with the fluorocarbon problem. They do not have the legislative power under existing general laws to deal with those two items. They need the Toxic Substances Control Act to handle products such as—

Senator Croll: So do we, so there is no difference. How do they deal with these things, then, without an act? They seem to talk about it constantly. You can pick up any American newspaper and from what they are doing in respect of the environment you would think they were the world leaders in that respect. In some instances, they indicate that they have taken steps to bring to an end an abuse of one kind or another, and I specifically recall that having happened in Cleveland and Pennsylvania. How do they do it without an act?

Dr. Brydon: With respect, senator, I think what you are talking about is using a variety of related acts to tackle a piece of the problem. For example, they do have water pollution measures and environmental protection measures in the United States, as we have environmental protection measures in the provinces, but inevitably there is a gap in that these measures do not cover the entire problem.

Mr. Alexander: In more general terms, senator, it would be fair to say that this whole problem of industrial environment, because of the nature of the beast in the United States, manifested itself sooner than it did in Canada. There are tremendous concentrations of industry in the United States and they had the experience of rivers catching fire. I think you will probably remember the incident of the river in Cleveland catching fire. They had terrible problems of environmental pollution and, of course, this has resulted in the United States in general being one of the first to move on these things. They identified the problem and have been moving on it both with state and federal legislation.

Certainly, the Environmental Impact Assessment Act was the first to be passed by Congress, and that was in 1970, and many things have been done under that act. As

Dr. Brydon said, they have not actually armed themselves, because they have not yet passed this Toxic Substances bill, to actually focus on environmental contaminants as we are seeking to do through this bill, so that when they get a problem such as the PCB's, they have to try to deal with it through special legislation, which is really, essentially, cure-type legislation rather than preventative legislation.

Senator Croll: If we were to throw this bill out today, we could continue, under various bits and pieces of other acts, to do almost what we are attempting to do through this bill.

Mr. Alexander: It would be entirely media oriented, though. In other words, we would have to do it, for example, under the Fisheries Act as it applied to fish. It would not be a holistic approach. It would be a bits and pieces type of approach.

Senator Croll: Well, our history of legislation has been bits and pieces. We are good at that.

Dr. Brydon: As I mentioned earlier, senator, clause 8(4), which deals with the composition of products, is the one major gap in our various legislative tools. The Hazardous Products Act deals with an immediate hazard to human health. It does not deal with an indirect threat, a long range environmental threat, such as the freons are alleged to pose.

Senator Macdonald: Would this bill, when passed, apply to the atmospheric pollution caused by the operation of a steel plant?

Dr. Brydon: The various clean air acts, provincial and federal, are the legislative acts designed to deal with gross pollution. If the emissions from a steel plant contain a specific substance of concern and that substance was entering the environment in an uncontrolled fashion, then Bill C-25 would be one vehicle that might be used to control that—perhaps by preventing its use in the process, thereby preventing it from getting into the environment. Generally speaking, however, Bill C-25 would not be used for that kind of local problem.

Senator Neiman: I want to deal with one specific problem, and that is the problem of aerosol cans, or the chemical component in aerosol cans. Is that what you have referred to as the fluorocarbons?

Dr. Brydon: Yes.

Senator Neiman: What, specifically, are we doing in that area today? I understand that the United States has recognized this as a great potential hazard and is dealing with it through special legislation. What are we doing in this area?

Dr. Brydon: We are doing two things. First of all, as far as research is concerned, the Atmospheric Environment Service has a fair sized research project, the purpose of which is to determine the stratospheric chemistry and the impact of the alleged mechanism.

I have been involved with the Canadian Manufacturers of Chemical Specialties in determining the uses and amounts used, to determine the amount released in this country and to prepare for the time in the future when a decision will be taken as to whether or not there is a definite hazard.

Senator Neiman: But the United States has decided, as a result of research carried out, that there is a definite hazard, or has that not yet been proven?

Dr. Brydon: Not yet, no. They have expressed the concern, as has our Atmospheric Environment Service, that the model which was developed a year and a half ago seems to be correct, but requires further information. If the model is shown to be essentially correct,—shall we say, by next summer—then they shall take measures to control the use of fluorocarbons by January, 1978.

That is the kind of hypothetical decision they have taken, and that is about the style of the statement that Madam Sauvé has made in Canada. Our attitude is a "watch and see" one, until some information is available to either substantiate or refute the model, because there is no way we can test that. It is a long range affair. The effect of liberating fluorocarbons now occurs 20 years from now. If we wait that long and the model is shown to be right, then it will be too late. We have to operate in a predictive way now in order to prevent a problem 20 years from now. It is the classic situation of the time bomb.

Senator Neiman: So you are working within a prescribed time limit. You are trying to make a determination within a much shorter time period?

Dr. Brydon: That is right.

Senator Fournier: Dr. Brydon, a few moments ago you mentioned that Canada, Sweden, Great Britain, Switzerland, Japan and the United States were attempting to do something about these things. Would it be possible to bring this matter before the United Nations and have it settle on the general principle which the countries signing the Agreement would then apply under their own conditions? After all, this is a world problem.

Dr. Brydon: Which agreement are you speaking of now, senator?

Senator Fournier: I am speaking of an agreement that could be reached in respect of the environmental contaminants.

Dr. Brydon: Perhaps the best response I can give to that, senator, is that the United Nations environment program really only began since the Stockholm Convention.

Senator Fournier: That was two or three years ago.

Dr. Brydon: Yes. The Nairobi people have geared up. They now have environmental programs and they are in close cooperation and coordination with other organizations, such as the World Meteorological Organization, the European Economic Community, the OECD Environment Committee, and so forth. There are many organizations now that are involved in the matter of pollution. Fortunately, what we are seeing today is that they are not each re-inventing the wheel. There is a measure of cooperation between them.

Senator Croll: Dr. Toft you have been sitting back there; we will let you earn your pay today. Where do you fit in the Department of National Health and Welfare? What particular branch? Do they have an environment branch in Health and Welfare?

Dr. Toft: Yes, Environmental Health Directorate, Health Protection Branch.

Senator Croll: What authority do you have?

Dr. Toft: It is a joint bill and both ministers named on the bill have certain responsibilities. The Department of the Environment has a responsibility of looking after the environmental aspects of the bill and also the administration and compliance aspects of it. We will advise them on the health aspects of any problem which they refer to us. We also initiate any act independently of them which we feel is of more interest to Health and Welfare than the Department of the Environment.

Senator Croll: So the health aspect of it, which is important, is your task and you advise them from time to time as to how it is to work out in so far as it affects health?

Dr. Toft: Yes.

Senator Croll: Are there any other elements involved besides health?

Dr. Brydon: Narrowly speaking, no; those are the two departments.

Senator Croll: That is all there is?

Dr. Brydon: Yes.

Senator Croll: It is your initiative and they advise your joint effort, with you carrying the ball?

Dr. Brydon: We already have a joint committee to look at that very situation, to try and determine priorities—after all, human health is a high priority—and determine where we should put our efforts. While we are dealing with the environment, we are also dealing with an indirect threat to human health. Does that answer your question?

Senator Croll: No, it does not. It does not answer my question for this reason, that I have always found these joint committee efforts to be worthless. Someone has got to take responsibility. I am of the view that it is your responsibility and you have got to do what needs to be done, but you do consult Health and Welfare? That is what I am trying to get at. Is it your responsibility?

Dr. Brydon: Yes.

Senator Croll: Your bill?

Dr. Brydon: Yes.

Senator Croll: The other people may come in on it collaterally and that is all?

Dr. Toft: I think it is fair to say that the Minister of National Health and Welfare can take action independently of Environment Canada, although acting through their department, but if he perceives a problem which is a pure health problem rather than an environmental problem, then the initiative would come from Health and Welfare. However, we would still act through the Department of the Environment.

Senator Croll: They can take action on their own, whereas you cannot, is that what you are saying?

The Chairman: On that point, I have noticed a number of clauses in this bill—there must be half a dozen—that start out by saying, “The Minister and the Minister of Health and Welfare” may do such-and-such. That means that two of them must act together. Can one initiate action, or can no action be taken unless the two of them agree to it?

Dr. Brydon: I will let Mr. Alexander deal with that.

Mr. Alexander: Mr. Chairman, the bill starts out with an information section, section 3. I suppose, basically, that this is really only there to try and set the stage. In other words, it provides for the gathering of information.

Then, in section 3, subsection (3) it indicates the kind of thing that they will be gathering information on. This sets out about four or five things which deal with the kind of problem that you are looking for, when you are dealing with environmental contaminants. They should make use of the services of other departments. This is to try to save the taxpayer and not, as Dr. Brydon said, to invent the wheel. We are trying to make use of what information is available so we do not go throwing around a lot of money unnecessarily. This is the information stage.

When you get down to the disclosure stage, that is where you can have mandatory disclosure. You can require people to give information and you can require people to do tests.

In the best of all possible worlds, I suppose nothing would ever be done until everything had been really carefully looked into and checked out, et cetera. Obviously that is impossible. Therefore, various priorities have got to be worked out as to what you are going to look into. So, when you get down to this disclosure stage, you have, as you mentioned, Mr. Chairman, an “and” situation. The minister and the Minister or National Health and Welfare at this point in time have to agree what it is they are going to look into, or require disclosure on.

This whole thing is so inter-related, human health and the environment. After all, the world is for men, I suppose. At least, that is what a lot of people say. My daughter thinks trees are more important. At any rate, human health and environment are essentially interlocked. It does become necessary for the two departments to work together.

Senator Croll: Yes, yes, but you start to use the word, by the time you get over on page 6, “Minister” and not “Ministers.”

Dr. Brydon: That is correct. At the beginning of section 4 the two ministers must have reason to believe, et cetera. Beyond that, it becomes the responsibility of the Department of Environment to carry out those activities of gazetting, obtaining information, that sort of thing, as in section 4(1)(a), 4(1)(b), 4(1)(c) and 4(2) and 4(3), et cetera.

Senator Croll: And is section 5 you are back to “Ministers”.

Mr. Alexander: They have to agree on recommendations to the Governor in Council. This is necessary. I do not know how these things would be resolved in cabinet, but if one of them felt desperately strongly that something should be done and dealt with it because it is a health hazard, and the Minister of the Environment did not think it was that important, presumably the matter would have to be resolved in cabinet. As far as the legislation is concerned, it does require them to agree on priorities and to agree in so far as possible on what recommendations they are going to make to the Governor in Council.

If they cannot agree the Cabinet will have to decide.

The Chairman: If there are no further questions, I have one small question I would like to ask.

You have two review boards, one set up under section 6 and another under section 7. Are these boards *ad hoc*

boards? Do you just set them up when you need them, or are they continuing boards?

Dr. Brydon: *Ad hoc* boards.

The Chairman: Why do you need to have two separate boards under two separate sections?

Mr. Alexander: There is only one board.

Dr. Brydon: The reference in section 7 deals with a requirement to have a board of review on demand after emergency action. In the normal course of events the opportunity for a board of review comes before scheduling and regulation. In an emergency, the government can schedule and impose regulations but they must then have an opportunity for a board or review afterwards, to give the same privilege to industry or to other interested persons to object. The intention is that they would be the same, philosophically.

The Chairman: The boards would be set up as needed?

Dr. Brydon: That is right.

The Chairman: We have just about covered the bill. Do you want to go through it clause by clause? We have covered it except this one on clause 8(5)(b). We have to wait until you can have further consultations with the minister, before we can decide whether that should be amended.

Mr. Alexander: I can say that as far as the question of imprisonment is concerned "up to" certainly was the intention. On the other matter, the question of receiving a fine, I would have to check that and perhaps, Mr. Chairman, we could simply get in touch with you if that would be acceptable to you and the committee.

The Chairman: It has been suggested that we sit tomorrow at 11:30 a.m. Is that agreeable to honourable senators?

Hon. Senators: Agreed.

The committee adjourned.

Thursday, November 20, 1975

Upon resuming at 11:37 a.m.

Senator Chesley W. Carter (*Chairman*) in the Chair.

The Chairman: Honourable Senators, this morning we are continuing our discussion of Bill C-25. Although we dealt quite thoroughly with it yesterday, we did defer until today further considerations of clause 8(5), with particular emphasis on paragraphs (a) and (b). Senator Denis raised two points yesterday: first, that paragraph (b) made the punishment mandatory imprisonment for two years without any option; second, that since indictments were more likely to involve corporations than individuals, and because corporations cannot be imprisoned, a heavier penalty was thus being placed on the individual than on the corporation. Senator Fournier raised the third point, that under the present wording it would be possible for a corporation to make a deal with one of its employees to take the rap for two years and thus avoid the penalty altogether.

Those were the three points we were not sure about yesterday and about which Mr. Alexander felt he needed

further consultation with the minister and officers of his department.

We have here this morning again Dr. Brydon, Mr. Alexander and Dr. Toft. I understand Mr. Alexander has a statement to make.

Mr. Alexander: Mr. Chairman, last night I had a look at various other acts in which this kind of offence provision exists and I also looked at the Criminal Code. I spoke with Mr. Sommerfeld, who is the Director of the Criminal Law Section of the Department of Justice, to see what he had to say about it. It is his recommendation, with which I entirely agree, that no change should be made.

First of all, clause 8(5) provides the following:

(5) Every person who contravenes this section is guilty of an offence and is liable

(a) on summary conviction, to a fine not exceeding one hundred thousand dollars; or

(b) on conviction upon indictment, to imprisonment for two years.

It says "is liable." That does not mean that the maximum of two years has to be imposed. It is exactly the same kind of language as used in other statutes of similar nature. For example, in the Hazardous Products Act and the Food and Drugs Act, although the wording is not identical, it is obviously similar. The Hazardous Products Act says in section 3:

(3) Every person who violates subsection (1) or (2) is guilty of

(a) an offence and liable on summary conviction to a fine of one thousand dollars or to imprisonment for six months, or to both; or

(b) an indictable offence and liable to imprisonment for two years.

In that particular instance the word "liable" is used in both paragraphs (a) and (b) whereas in this particular one it is used before them. But the word "liable" applies in each instance.

Furthermore, in the interpretation section of the Criminal Code, Section 645, appears the following:

(2) Where an enactment prescribes a punishment in respect of an offence, the punishment to be imposed is, subject to the limitations prescribed in the enactment, in the discretion of the court that convicts a person who commits the offence, . . .

So this makes it clear that, in fact, there is a discretion.

The other point related to the question of there being no fine in paragraph (b); it just says "on conviction upon indictment," and there is no provision for a fine. Again this is standard, and the reason for that is that section 646 of the Criminal Code applies. Section 646 reads in part as follows:

An accused who is convicted of an indictable offence punishable with imprisonment for five years or less may be fined in addition to or in lieu of any other punishment that is authorized,—

And I will read it just to complete it.

—but an accused shall not be fined in lieu of imprisonment where the offence of which he is convicted is punishable by a minimum term of imprisonment.

That last part does not apply in this particular case.

So therefore, as I have said here, this is the way in which it is normally done, and this fits in with acts of a similar nature such as the Hazardous Products Act and the Food and Drugs Act; and it is further covered by these two sections of the Criminal Code. To recapitulate, section 645 gives the discretion to impose a lesser term of imprisonment, but only up to two years; section 646 permits the court to impose a fine in addition to or in lieu of imprisonment.

Senator Denis: In that case, then, why in paragraph (a) are the words "not exceeding one hundred thousand dollars" included? They put the words "not exceeding" in paragraph (a), but they do not say in paragraph (b) "not exceeding two years." Why use the expression in one and not in the other?

Mr. Alexander: The reason for that, Senator, is that in a summary conviction offence or prosecution it is the suggestion that there should be a maximum fine imposed. In other words, it should be not more than one hundred thousand dollars. However, where it is taken by indictment, the court would have, under this provision which I have mentioned to you, the discretion of imposing in lieu of or in addition to imprisonment a fine in an amount which would be entirely in the discretion of the court. It could be anything the court thought ought to be imposed, from ten dollars to half a million dollars. This is deliberately flexible.

Senator Fournier: Mr. Chairman, does this bill have in it anywhere the words "notwithstanding any other law to the contrary, the provisions of this bill will apply"? If so, that would have the effect of excluding the provisions of the Criminal Code.

Mr. Alexander: Senator, the Criminal Code definitely applies. This clause has the effect of creating a crime and the provisions of the Criminal Code would then apply. Of course, it would be perfectly possible to write a provision into this bill which would be much more specific than the provisions of the Criminal Code.

Senator Fournier: We would not want that.

Mr. Alexander: In that case, the provisions of this bill would override the provisions of the Code because the particular would override the general. However, as this has been left open, the provisions of the Criminal Code would apply. Obviously, the courts will have considerable discretion in meting out punishment, depending on how serious in the judgment of the court the offence is.

Senator Smith: Mr. Chairman, it would be helpful to the members of the committee who have no legal training if Mr. du Plessis were to give us his views on the matter.

The Chairman: Mr. du Plessis, do you have any comments to make?

Mr. du Plessis (Acting Assistant Law Clerk and Parliamentary Council): Mr. Chairman, until you called me to this meeting a few moments ago I had not had an opportunity to look into this matter at all, but, having heard Mr. Alexander's explanation, I must say that I concur in what he has said. Mr. Alexander quoted sections 645 and 646 of the Criminal Code. Those sections certainly apply in this case. He also referred to sections of the Hazardous Products Act and the Food and Drugs Act and certainly we would want to see consistency in legislation. So, having

heard what he has said, I would concur in the views he expressed.

Senator Denis: But how would you explain the other bills then? In other bills it is expressly set out that there is a fine or a sentence of imprisonment or both. Then you refer it to the Criminal Code and you say that it could be applied that way. But why is it that they actually put it in other bills and not in this one?

Mr. Alexander: Well, senator, let me read to you what is said in the Hazardous Products Act:

(3) Every person who violates subsection (1) or (2) is guilty of

(a) an offence and liable on summary conviction to a fine of one thousand dollars or to imprisonment for six months, or to both;—

I cannot really explain why that was selected for that particular bill, and why we have selected this, except that I suppose these things would have to be somewhat arbitrary. Originally we had only ten thousand dollars for summary conviction, and it was pointed out to us in the Commons committee that it was felt that ten thousand dollars as a maximum was too low, and that it should be raised. So it was raised to one hundred thousand. Now you may say, "Why not ninety thousand?" and I would have to say I do not know. But it still allows the court to have discretion and it was also felt that this one hundred thousand dollars was more in line with punishments in other legislation of an environmental nature. That is the only answer I can give you.

The Chairman: If I understand you correctly, the amendment made in the other place raising the penalty from \$10,000 to \$100,000 was not really necessary because the argument you are applying to this would apply to the earlier reading, would it not?

Mr. Alexander: Except that the maximum would have been \$10,000 and that is now raised to \$100,000.

The Chairman: That would have been the maximum?

Mr. Alexander: Yes, and the \$100,000 is now the maximum.

The Chairman: So what is set out specifically in the bill becomes the maximum?

Mr. Alexander: On summary conviction the maximum is set and it is now \$100,000. This was amended from \$10,000. As far as indictment is concerned, nothing is said about the fine, and therefore under the provisions of the Criminal Code it is open to the judge to decide, if a person is convicted of an indictable offence, as to whether or not, in addition to sending him to prison—and obviously if it is a corporation he cannot do that—he would have to impose a fine on the corporation, and he would have a discretion as to the amount of the fine.

Senator Denis: With no maximum?

Mr. Alexander: With no maximum.

The Chairman: He is not limited then by the \$100,000?

Mr. Alexander: That is correct.

The Chairman: One other point, the connecting link between Bill C-25 and the Criminal Code is this word "liable," is that right?

Mr. du Plessis: No, it is the word "offence".

Mr. Alexander: What "liable" means is "liable up to"; in other words, it is not a maximum.

Senator Croll: It is the word "offence" which provides the link.

The Chairman: But if you had an offence and the word "liable" was left out, what would be the situation then?

Mr. Alexander: Well, he would be guilty of an offence and the judge would simply say, "You must not do it again", but he would not be able to impose a sentence.

The Chairman: So the penalty in the Criminal Code would not apply if the word "liable" were left out.

Mr. du Plessis: There is no real option to leave out the word "liable"; it has to be there.

The Chairman: So that would be the connecting link.

Senator Croll: No, the offence is the connecting link; the liability would be there otherwise.

Mr. du Plessis: The word "liable" is there because a person who contravenes the section can be found guilty of an offence and then becomes liable to a penalty.

The Chairman: I know you cannot fine a person if he does not commit an offence, but he might be able to commit an offence and you still might not be able to fine him.

Mr. Alexander: But he has to be proven guilty beyond a reasonable doubt.

Senator Croll: I will move the preamble and I will move the bill.

Senator Bourget: And I will second it.

The Chairman: Before we finish with the bill, I received a communication from Senator Quart who spoke for the Opposition on this bill in the Senate. She has asked me if I would put some questions that she would have asked if she had been here today. She is unfortunately unable to be present. So, with the committee's permission, I would like to go ahead and put these questions to the witnesses.

The first question is as follows: According to this bill—and I am presenting this question on behalf of Senator Quart—manufacturers will have to notify the minister of all new substances within three months of their manufacture or import, and the government is also authorized to require the manufacturer to supply information on these new substances. Would our witnesses not agree that this falls far short of what we should be after in the way of protection? Reporting the existence of a substance is definitely not the equivalent of monitoring a substance and disclosing potentially hazardous side effects. Is this not what we should be imposing by way of safeguard?

Dr. Brydon: I think the answer ideally is "yes". We would all like that kind of provision for the host of chemicals in commerce. But then when you look at the situation from the practical point of view the question arises as to just how we could respond and handle that kind of a project, quite apart from the expense it would put on industry. As I mentioned yesterday afternoon I believe, the Japanese have identified 20,000 chemicals in commercial use. Then if you multiply that by the number of users and

the number of companies, particularly where we have an unknown but huge number of uses by individuals, you get an idea of the difficulty involved. The philosophy of Bill C-25 was to move away from the registration scheme involved with, say, the Food and Drugs Act and the Pest Control Products Act, and go towards a selective approach whereby priority substances would be identified and they would be investigated by the government to determine the risk involved. On top of that, in order to add to the early-warning system and to trigger the identification of a potential problem, you move to clause 4(6), which Senator Quart refers to in her question, and which is designed to require that any company involved in any substance for the first time must notify the government.

Senator Bourget: Even if it is not in the list?

Dr. Brydon: That is right, and the reason it is done that way is because an individual company or person will know what is new to him, but he may not know what is new to commerce or what is a new chemical because he does not know what his neighbour is doing, but he does know what is new to him. Therefore, information on substances new to that person must be reported. We think it will be a valuable part of an early warning system and that it will be manageable in the first instance. May I add to my first response, "ideally, yes." We would like to have a more far-reaching approach to testing and reporting. One senator inquired yesterday whether this was a leading piece of legislation. I think it was obvious from my remarks that different countries are approaching it in a different way. We are all on a learning curve, and as we gain more experience and information on how these things work in different countries, we may require a different response in, say, five years from now. We think that at this moment Bill C-25 provides the best way to do it from a practical point of view.

The Chairman: The next question is: What sort of evidence will the manufacturer be expected to produce if the government asks for it?

Dr. Brydon: The kind of evidence that the manufacturer must produce will depend entirely on the substance and the intended use. If a substance is intended for an enclosed use, or a narrow range of uses, where the likelihood of getting into the environment is slim, the degree of testing would not be as elaborate. Where a substance is going to be used in a much wider way—for example, as a detergent—where it will be used all across the country, where individual people will be exposed to it, and there is a possibility of it getting through the sewage system into the environment, this is, by definition of its use, wide dissemination and it would require much more elaborate testing for that particular use than for others. I repeat, the answer to that question will depend upon the use to which the chemical is to be put and the amount to be used.

The Chairman: Another question is: What about the testing requirements, if any, to be imposed on the manufacturer? Is there any provision here for government approving these techniques before they are used, in order to ensure they are adequate?

Dr. Brydon: That has deliberately been left open to the discretion of the minister, in section 4(1)(c); that from time to time the minister may require individual companies to carry out specific tests. There is no requirement built into this legislation to name the kind of test or the extent of the test at this time. It will vary from time to

time and will change with time as we become more expert in our knowledge of what the tests should be.

The Chairman: The next question is: When all the information comes in on a new substance, does the government have the facilities to do a competent job of assessing it? What arm of government is equal to the task? Where will this be done?

Senator Fournier: To what is she referring?

The Chairman: Information coming in on a new substance. Does the government have the facilities to assess this information and appraise it? What branch of government will do that?

Dr. Brydon: Perhaps I could answer part of it, and perhaps Dr. Toft might also respond. There are two parts to this. One is evaluation of the ecological and environmental impact. The other is evaluation of the health impact. There is a parallel right now, with the Pest Control Products Act, the registration scheme under the Pest Control Products Act, managed by the Department of Agriculture, as you know, and evaluated by the Department of National Health and Welfare and various arms of the Department of the Environment, such as the Wildlife Service and the Fisheries Service.

One of the problems is a shortage of competent people, competent toxicologists. Because environmental toxicology is relatively new, we are faced with a shortage of experienced and competent environmental toxicologists. Do you have any comments to make, Dr. Toft?

Dr. Toft: I think we outlined yesterday the processes whereby the two departments interact. This would apply to advice which we give to Environment Canada regarding any health impact of substances being considered. Regarding the question of resources, I think this question remains open at the moment. Both departments would need some extra resources to handle it.

The Chairman: That leads to the next question: Will the government be able to judge the potentially hazardous quality of new chemicals without an independent research facility specifically geared to that purpose? You are saying that in some cases special research facilities will be needed.

Dr. Toft: It will depend on the compound and the hazard.

The Chairman: The next question is: New substances present impressive "unknowns," such as cumulative effect, persistence, reaction with other chemicals, side effects, by-products, waste disposal characteristics, et cetera. Knowledge of these factors depends on a good research program. Do we have one presently in place? Do we have an adequate research program in place?

Dr. Toft: The Department of National Health and Welfare has a research program in place, but there is certainly room for enlargement of it.

The Chairman: The final question is: How will we avoid any conflicts with provincial governments over jurisdiction in the field of pollution control? If we get embroiled in jurisdictional questions every time there is a problem, will that not make it rather difficult to handle the problems that require urgent handling? I think you dealt with that to some extent yesterday, but you may want to make a further comment.

Mr. Alexander: The only thing I could add to what was said yesterday is that we are looking here at a substance and its effect. The first thing, of course, is to gather information on it. It would seem, from a logical point of view, that it is better that it be done by one person than have 11 people gather information, although there may be information that the other 10 people may have which could be used by the federal people in gathering the information. This I think is not so much an argument in jurisdiction as an argument in common sense. There is a provision in the bill that where you are gathering information you should make use of any information obtainable from other departments of government or anywhere else—other provinces, internationally, or wherever it may be.

The Chairman: Arising out of these questions, I am not absolutely clear how the legislation will work on new substances. I can see how it could work with respect to substances that we already know are dangerous or suspect to be dangerous. For example, yesterday we were talking about fluorocarbons and aerosols. We are not sure yet whether or not they are sufficiently dangerous. It takes time. Some time ago we had legislation concerning phosphates in detergents. There was special legislation to ban certain phosphates because of the algae that was polluting our water. These things take time. What is the mechanism for dealing with new substances, where you do not know and it will take a period of time, or where there may be a cumulative effect, or you do not know whether or not there is a cumulative effect until a certain time has passed and you can do these tests? How will this legislation work in those circumstances?

Dr. Brydon: There are two or three responses to that question. Perhaps, first, I could deal with the definition of class of substance in the bill. The government can investigate and can schedule classes of substances based upon knowledge of the biological effects of one, and extend the regulation to all of that class of substances whether or not they are known.

The Chairman: Whether or not they are dangerous?

Dr. Brydon: Whether or not they are dangerous. Potentially they can be dealt with as a class. That is one of the first preventive measures. Chemists and biologists have a term called "structure-activity relationship"; in other words, there are certain groupings of atoms in chemical compounds which have been determined to have a specific biological effect. Therefore, any compound with that particular group of elements, or that moiety as defined here, can be included. One of the reasons for this approach of "class or substance" is to identify that grouping, that moiety, on the basis of structure and its biological activity relationship.

This is a very difficult field, and more and more physiologists, chemists and biologists are refining the information in that area. The chemical companies in particular are quite sophisticated in the field of determining structure-activity relationships. Up until the recent past they have considered that information to be trade secrets. If they are developing, say, a pesticide, they know that a given group of atoms is capable of controlling fungi. They are continually looking for similar compounds incorporating that group of atoms. They are looking at it from the point of view of efficacy—that is, whether it will work as a fungicide. However, the environmental and human toxicologists look at it from the opposite direction: if this particular group of atoms or moiety has this side effect on human

beings, then what about all the rest of the class of substances? It is our intent ideally to use that kind of philosophy. Our information is not too elaborate yet, so it may not work that well in the first instance, but as we go along we hope it will.

The Chairman: With respect to new substances, you would require a company to supply you with the chemical formula, the molecular structure and the process.

Dr. Brydon: That is right. The power is in the bill for the government to demand that kind of information.

Senator Croll: Is there confidentiality?

Dr. Brydon: Yes. Clause 4(4) was very carefully introduced into the bill in the early stages following our negotiations with the Canadian Manufacturers Association to protect a company's proprietary information.

Senator McGrand: Does what you have just discussed get into the body mostly through food or through the atmosphere? Do we ingest these dangerous elements with food or breathe them in through the atmosphere?

Dr. Brydon: The objective of the bill is to cover all avenues. There are many, many avenues through which substances get into the environment, and there are many impacts on us, through our drinking water, our food, the air, through evaporation, skin contact or whatever. The idea of the bill is to give power to the government to apply a control at the key link in the overall release in order to cut down on the many avenues of leakage of the chemical into the environment.

Senator Bourget: I have one technical question on clause 4 (6). It says:

Where, during a calendar year, a person manufactures or imports a chemical compound in excess of five hundred kilograms.

Why the figure of five hundred?

Dr. Brydon: It is not a magic number. I suspect probably the reason for it is that in the United States one of their agencies requires reporting of the use of a chemical when more than five hundred pounds of it a year have been used. Since we are moving into the metric age we have now gone to five hundred kilograms.

Senator Bourget: I am asking about the figure of 500. Suppose they import 450 kilograms. It could be as dangerous as 500 kilograms, because it depends upon the compound, upon the kind of chemical. I was wondering why you have the figure of 500 rather than 50 or 100.

Dr. Brydon: It is just an arbitrary number to trigger in our system of information gathering the fact that that substance is being used.

Senator Croll: I suppose for statistical purposes it is easy to affiliate with the United States.

The Chairman: It may have to be revised in light of experience. Are you ready for the question?

Senator Croll: I move that we report the bill.

The Chairman: Shall the preamble carry?

Hon. Senators: Carried.

The Chairman: Shall the bill carry?

Hon. Senators: Carried.

The Chairman: Shall I report the bill without amendment?

Hon. Senators: Agreed.

The Chairman: Thank you very much, Dr. Brydon, Mr. Alexander and Dr. Toft.

The committee adjourned.



FIRST SESSION—THIRTIETH PARLIAMENT
1974-75

THE SENATE OF CANADA

PROCEEDINGS OF THE
STANDING SENATE COMMITTEE ON

HEALTH, WELFARE AND SCIENCE

The Honourable CHESLEY W. CARTER, *Chairman*

Issue No. 11

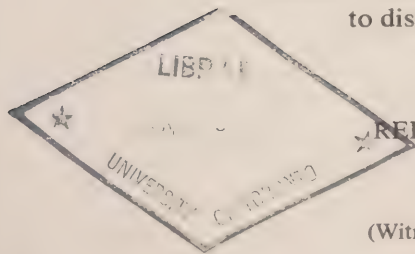
THURSDAY, DECEMBER 18, 1975

Complete Proceedings on Bill C-75, intituled:

**“An Act to increase the rate of return on Government
Annuity contracts, to increase their flexibility and
to discontinue future sales thereof”**

REPORT OF THE COMMITTEE

(Witness: See Minutes of Proceedings)



THE STANDING SENATE COMMITTEE ON
HEALTH, WELFARE AND SCIENCE

The Honourable C. W. Carter, *Chairman*

The Honourable M. Lamontagne, P.C.,
Deputy Chairman.

AND

The Honourable Senators:

Argue	Inman
Blois	Langlois
Bonnell	Macdonald
Bourget	McGrand
Cameron	Neiman
Croll	Norrie
Denis	*Perrault
*Flynn	Phillips
Fournier	Smith (<i>Queens-Shelburne</i>)
(<i>de Lanaudière</i>)	Sullivan—(20)
Goldenberg	

**Ex officio* member

(Quorum 5)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, Wednesday, December 17, 1975:

Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Barrow, seconded by the Honourable Senator Riley, for the second reading of the Bill C-75, intituled: "An Act to increase the rate of return on Government Annuity contracts, to increase their flexibility and to discontinue future sales thereof".

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Barrow moved, seconded by the Honourable Senator Lefrançois, that the Bill be referred to the Standing Senate Committee on Health, Welfare and Science.

The question being put on the motion, it was—
Resolved in the affirmative.

Robert Fortier,
Clerk of the Senate.

Minutes of Proceedings

Thursday, December 18, 1975

(15)

Pursuant to adjournment and notice, the Standing Senate Committee on Health, Welfare and Science met this day at 11:15 a.m., the Chairman, the Honourable Senator Carter, presiding.

Present: The Honourable Senators Argue, Carter, Inman, Macdonald, Phillips and Smith (*Queens-Shelburne*). (6)

Present but not of the Committee: The Honourable Senator Barrow.

The Committee proceeded to the consideration of Bill C-75, intituled: "An Act to increase the rate of return on Government Annuity contracts, to increase their flexibility and to discontinue future sales thereof".

Mr. D. J. Steele, Executive Director of the Services Branch, Unemployment Insurance Commission, was heard in explanation of the Bill. Mr. Steele answered questions put to him by members of the Committee.

After discussion and on motion of the Honourable Senator Macdonald, it was *RESOLVED* to report the Bill without amendment.

At 11:23 a.m., the Committee adjourned to the call of the Chair.

ATTEST:

Patrick J. Savoie,
Clerk of the Committee.

Report of the Committee

Thursday, December 18, 1975

The Standing Senate Committee on Health, Welfare and Science to which was referred Bill C-75, intituled: "Act to increase the rate of return on Government Annuity contracts, to increase their flexibility and to discontinue future sales thereof", has, in obedience to the order of reference of Wednesday, December 17, 1975, examined the said Bill and now reports the same without amendment.

Respectfully submitted,

Chesley W. Carter,
Chairman.

The Standing Senate Committee on Health, Welfare and Science

Evidence

Ottawa, Thursday, December 18, 1975

The Standing Senate Committee on Health, Welfare and Science, to which was referred Bill C-75, to increase the rate of return on Government Annuity contracts, to increase their flexibility and to discontinue future sales thereof, met this day at 11.15 a.m. to give consideration to the bill.

Senator Chesley W. Carter (*Chairman*) in the Chair.

The Chairman: Honourable senators, we have before us this morning Bill C-75, and we have as our witness Mr. D. J. Steele, Executive Director, Services Branch, Unemployment Insurance Commission.

Would you please introduce the officials accompanying you, Mr. Steele?

Mr. D. J. Steele, Executive Director, Services Branch, Unemployment Insurance Commission: On my right, Mr. Chairman, is Mr. E. Meyers, Director, Annuities Branch; next Mr. T. Hall, Actuary, Annuities Branch; next, Mrs. M. Kolokoski, Chief, Contracts Division, Annuities Branch; and Mr. J. A. R. McCuan, Chief, Program Evaluation and Administration Division, Annuities Branch.

I do not have an opening statement as such, Mr. Chairman, but we have made available to all members of the committee a booklet setting out a clause-by-clause explanation of the bill. I should point out that because clause 6 of the bill was amended in the House of Commons, the booklet is not quite correct as it relates to that clause, although the explanation is still basically a valid one.

The Chairman: Thank you, Mr. Steele. Senator Barrow will lead off the questioning.

Senator Barrow: Mr. Chairman, as you know, I moved the second reading of this bill in the Senate. Senator Grosart spoke on second reading and asked a number of questions which he, in turn, seemed to be able to answer himself. There were, however, one or two other questions put to me privately that I should like to put to the witness.

To whom would one write to determine the effect of this legislation on individual annuity contracts?

Mr. Steele: Mr. Chairman, we plan to write to every annuitant individually, explaining the effect of this legislation on his or her particular annuity. With 280,000 annuitants, all of them having different arrangements, we felt it would be better to write to them individually, setting out the effects of this legislation and how it applies to that particular annuitant. Assuming this bill is passed into law in the next week or so, we expect to be able to have these letters in the mail by the end of January.

If someone wanted to make general inquiries, perhaps they could call or write the Director of the Annuities

Branch, which is located at 355 River Road, Vanier, K1A 0J8.

Senator Barrow: The other question which was raised was whether or not an annuity could be deferred. I suppose that by writing to the Director of the Annuities Branch one could find out that kind of information.

Both Senator Flynn and Senator Forsey suggested that because of the increase in the rate of return, it might be worthwhile to continue the Annuities Branch. Do you have any comment to make on that?

Mr. Steele: The explanation that has been given, of course, is that annuities of the type the government has been providing are freely available from the private sector. This is a case where it is questionable whether the government should be in competition with the private sector, particularly as the private sector has a wider range of annuities available than does the government at this time.

Also, if you look at the retirement situation, the Canada Pension Plan, the Old Age Security and GIS are really better equipped, from the government's point of view, to look after the needs of our elderly people in that they are indexed and have the ability to use current revenues to raise the benefits, whereas with annuities one is tied into the group of people—and it is usually by age—on which the annuity is based. What you put into an annuity is really what you get out, with accrued interest, whereas with inflation rates, and so forth, one would probably be better off with an indexed type of plan, such as the CPP or Old Age Security. That, I think, is the area in which the government should concentrate its efforts. It is true, too, that the private sector is going through a great deal of re-appraisal in terms of pension plans, in view of current inflation rates.

The Chairman: This bill would increase the rate of return on annuities to 7 per cent?

Mr. Steele: That is correct.

The Chairman: There are some private plans, I understand, which are paying up to 10 per cent, are there not?

Mr. Steele: Yes. If you bought an immediate annuity from a life insurance company, you might be able to get 9 or 9½ per cent.

The Chairman: But this bill applies only to annuities that are already in effect?

Mr. Steele: That is correct. The majority of them were purchased many years ago. The government feels that a 7 per cent return is fair treatment of these people, particularly when you consider the situation of those people who bought stocks and bonds with interest rates of 5, 6 or 7 per cent.

Senator Smith: Or perpetual.

Mr. Steele: Yes.

The Chairman: Senator Barrow, you mentioned that Senator Grosart raised some questions.

Senator Barrow: Yes, but he answered them himself.

The Chairman: Are there any other questions?

Senator Macdonald: No.

The Chairman: Is it the wish of the committee to go through the bill clause by clause?

Senator Macdonald: Mr. Chairman, I move that we report the bill without amendment.

The Chairman: Shall the bill carry?

Hon. Senators: Carried.

The Chairman: Shall the preamble carry?

Hon. Senators: Carried.

The Chairman: Shall I report the bill without amendment?

Hon. Senators: Carried.

The Chairman: Thank you, Mr. Steele.

The committee adjourned.

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FIRST SESSION—THIRTIETH PARLIAMENT
1974-76

THE SENATE OF CANADA

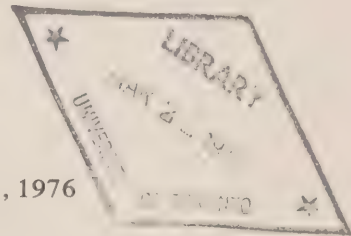
PROCEEDINGS OF THE
STANDING SENATE COMMITTEE ON

HEALTH, WELFARE AND SCIENCE

The Honourable C. W. CARTER, *Chairman*

Issue No. 12

THURSDAY, FEBRUARY 19, 1976



First Proceedings on:

The Study of the feasibility of a Senate Committee inquiring
into and reporting upon crime and violence in contemporary
Canadian society.

THE STANDING SENATE COMMITTEE ON
HEALTH, WELFARE AND SCIENCE

The Honourable C. W. Carter, *Chairman*

The Honourable M. Lamontagne, P.C.,
Deputy Chairman.

AND

The Honourable Senators:

Argue	Inman
Blois	Langlois
Bonnell	Macdonald
Bourget	McGrand
Cameron	Neiman
Croll	Norrie
Denis	*Perreault
*Flynn	Phillips
Fournier	Smith
(<i>de Lanaudière</i>)	(<i>Queens-Shelburne</i>)
Goldenberg	Sullivan—(20)

**Ex officio* member

(Quorum 5)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate of Canada, Thursday, 18th December, 1975:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator McGrand, seconded by the Honourable Senator Eudes:

That the Senate considers it desirable that a special committee of the Senate be established at an early date to inquire and report upon crime and violence in contemporary Canadian society.

And on the motion in amendment thereto of the Honourable Senator McElman, seconded by the Honourable Senator Carter:

That the motion be not now adopted but that the subject-matter thereof be referred to the Standing Senate Committee on Health, Welfare and Science,

After debate,

In amendment, the Honourable Senator Asselin, P.C., moved, seconded by the Honourable Senator Choquette, that the motion in amendment be amended by removing the period at the end thereof and adding the following words:

"and that the Committee be instructed to look into and report upon the feasibility of a Senate Committee's inquiring into and reporting upon crime and violence in contemporary Canadian society and that, if the Committee decides that such a study is feasible and warranted, it be further instructed to set down clearly how, by whom, and under what precise terms of reference such a study should be undertaken."

After debate, and—

The question being put on the motion, in amendment, of the Honourable Senator Asselin, P.C., seconded by the Honourable Senator Choquette, to the motion, in amendment, of the Honourable Senator McElman, seconded by the Honourable Senator Carter, it was—

Resolved in the affirmative.

The question then being put on the motion in amendment of the Honourable Senator McElman, seconded by the Honourable Senator Carter, as amended, it was—

Resolved in the affirmative."

Robert Fortier,
Clerk of the Senate.

Minutes of Proceedings

Thursday, February 19, 1976
(16)

Pursuant to adjournment and notice, the Standing Senate Committee on Health, Welfare and Science met this day at 10.05 a.m., the Chairman, the Honourable Senator Carter, presiding.

Present: The honourable Senator Carter (*Chairman*), Blois, Bonnell, Bourget, Croll, McGrand, Neiman, Norrie, Smith (*Queens-Shelburne*). (9)

Present but not of the Committee: The Honourable Senators Lang and McElman.

In attendance: Messrs. Hugh Finsten and Gary Tait, Research Officers, Research Branch, Library of Parliament.

The Committee proceeded to the consideration of its Order of Reference dated December 18, 1975, "that the Committee be instructed to look into and report upon the feasibility of a Senate Committee's inquiring into and reporting upon crime and violence in contemporary Canadian society and that, if the Committee decides that such a study is feasible and warranted, it be further instructed to set down clearly how, by whom, and under what precise terms of reference such a study should be undertaken."

On motion of the Honourable Senator Croll, it was *RESOLVED* that this days Minutes of Proceedings and evidence be printed.

The Chairman made a brief introductory statement after which he read the Committee's Order of Reference dated Thursday, December 18, 1975. The Chairman then expanded on his introductory statement and gave an outline of the events which had occurred since the Order of Reference had been referred to the Committee.

A research paper entitled "The Causes of Crime and Violence: influence in early childhood" jointly undertaken by Messrs. Hugh Finsten and Gary Tait was distributed to members present. Messrs. Finsten and Tait both made comments on certain aspects of their paper and then answered questions put to them by members of the Committee.

The Honourable Senators McGrand made a statement and expanded on his thoughts for a Senate Committee enquiring and reporting upon crime and violence in Canadian contemporary society.

A discussion ensued. It was *AGREED* that before the Committee comes to a conclusion on its Order of Refer-

ence, it should seek further advice from experts and additional research should be made on the subject matter referred to the Committee.

At 11:00 a.m., the Committee adjourned to the call of the Chairman.

ATTEST:

Patrick J. Savoie,
Clerk of the Committee.

The Standing Senate Committee on Health, Welfare and Science

Evidence

Ottawa, Thursday, February 19, 1976

The Standing Senate Committee on Health, Welfare and Science met this day at 10:05 a.m. to look into and report upon the feasibility of a Senate committee's inquiring into and reporting upon crime and violence in contemporary Canadian society.

Senator Chesley W. Carter (*Chairman*) in the Chair.

The Chairman: Honourable senators, the first decision we have to make is about the proceedings. Do you wish to have the proceedings of this meeting printed or just recorded? When I say "printed", I mean published as in *Hansard*.

Senator Croll: There is no reason why it should not be recorded. This is an ordinary meeting, is it not?

The Chairman: Yes, it is a regular meeting. It is an internal matter; it is not on legislation; it is more or less of an internal nature. That is the reason why I asked the question.

Senator Croll: It is all right with me, whichever way you wish to proceed. I have no views on the matter.

The Chairman: Everyone is agreed that the meeting should be recorded?

Senator Neiman: Yes.

The Chairman: Will someone make a motion?

Senator Croll: I will.

The Chairman: It is moved by Senator Croll and seconded by Senator Neiman that the proceedings of this meeting be published.

Hon. Senators: Agreed.

The Chairman: I will open the meeting with a brief statement giving the background of what has transpired so far.

Honourable senators will recall that just before the Senate recessed for the Christmas holiday, the Senate passed a motion giving certain instructions to this committee. If you will look at the copy of the notice, you will see that the instructions arose out of Senator McGrand's motion which went before the house, to which there were amendments. The amendments cover two phases. The first is to determine the feasibility of proceeding with Senator McGrand's motion. Then, if we determine it is feasible to proceed, we are further instructed to make recommendations as to the procedure to be adopted.

I will read the instruction, if for some reason you do not have it before you. This is taken from the proceedings of the Senate of Thursday, December 18, 1975, page 685:

Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator McGrand, seconded by the Honourable Senator Eudes:

That the Senate considers it desirable that a special committee of the Senate be established at an early date to inquire into and report upon crime and violence in contemporary Canadian society.

And on the motion in amendment thereto of the Honourable Senator McElman, seconded by the Honourable Senator Carter:

That the motion be not now adopted but that the subject-matter thereof be referred to the Standing Senate Committee on Health, Welfare and Science.

After debate,

In amendment, the Honourable Senator Asselin, P.C., moved, seconded by the Honourable Senator Choquette, that the motion in amendment be amended by removing the period at the end thereof and adding the following words:

"and that the Committee be instructed to look into and report upon the feasibility of a Senate Committee's inquiring into and reporting upon crime and violence in contemporary Canadian society and that, if the Committee decides that such a study is feasible and warranted, it be further instructed to set down clearly how, by whom, and under what precise terms of reference such a study should be undertaken."

Therefore, the question before us this morning is the first part of the amendment, namely, to inquire into and report upon the feasibility of carrying out a study such as that contemplated in Senator McGrand's motion. As soon as that motion was passed by the Senate, I got in touch with the Parliamentary Librarian, Mr. Spicer, and asked him if he would be good enough to put one of the research officers on his staff on to this job to inquire into and determine what already exists by way of studies on this very subject.

We have here this morning Mr. Hugh Finsten, on my right, and Mr. Gary Tait, the two research officers who have been working on this matter.

Mr. Finsten conducted his study while Parliament was in recess. As soon as the Senate reconvened, I called a meeting of the steering committee to discuss the parameters of our study, the criteria we should set up, et cetera. We also have before us the study prepared by Mr. Finsten.

Senator McGrand was not present at our steering committee meeting but I contacted him afterwards, as the committee instructed me to do, and I discovered that the study which had been carried out by Mr. Finsten was not on the exact points which Senator McGrand's motion encompassed.

Senator McGrand's motion, while it referred to the causes of violence and crime, addressed itself mainly to the symptoms which can be spotted at an early stage in life—in infancy and childhood. It concerned itself with preventive measures which might be taken at an early stage in the individual's life, and suggested that at least the tendencies in individuals should be kept in mind by teachers, parents and so on.

Following that, I asked Mr. Finsten to carry out another study along the lines indicated by Senator McGrand in his speech in the Senate, and also in a brief, which, I understand, he has distributed to all members of the committee.

This morning I received a copy of the second study jointly undertaken by Mr. Finsten and Mr. Tait. As we have not yet had an opportunity to read it, let alone study it, I suggest that we call on Mr. Finsten and Mr. Tait to elucidate the main points in their brief. Is that agreeable?

Hon. Senators: Yes.

The Chairman: Mr. Finsten, are you prepared to do that?

Mr. Hugh Finsten, Research Officer, Research Branch, Library of Parliament: Yes, Mr. Chairman.

Honourable senators, we found that not too much work had been done in this particular area, and since we had only a short time in which to prepare the material, we made a few calls to find what we could and we looked at the books which were available to us.

Our paper examines just a few areas. Part A looks at the pregnant mother and the influences on the fetus which might cause behavioural disturbances in the child. It considers the aspect of birth trauma such as might occur when a child's birth is surrounded by problems—for example, the use of forceps to drag the child out of the mother's womb.

I would suggest that Mr. Tait comment on the second part of the brief.

Mr. Gary Tait, Research Officer, Research Branch, Library of Parliament: Honourable senators, the second part of the paper is concerned with the basic tendencies towards aggression in the infant and very young child. The theory outlined proposes that these tendencies are basically biological and cannot be negated in any sense but must be channelled. The important persons involved in channeling aggressive behaviour in the child's life are essentially the parents and the people in close contact with the child who are responsible for his upbringing.

Where a parent is absent from the family, where there is a definite lack of love and affection for the child, such conditions can lead to hostility in the child and, perhaps, to later problems, such as juvenile delinquency and criminal regression, although the criminal side of it is not that clear; but certainly the child may become hostile.

We then look at the mechanisms for the socialization of the child, stressing the point that in the socialization of the child the parent has a very important role and the family has a very important role. Obviously, environment is a key factor here.

Finally, we conclude that criminal behaviour may be the result of defective social training in early family life. The point to be stressed is that it "may be"; there is no clear-cut causal link. No one factor is responsible; there may be a multitude of factors which show throughout the life of the child.

I mention studies concerning child delinquents where there is the absence of a father. Many studies show that the absence of a father is crucial in determining the future anti-social patterns of behaviour in the child.

Those are the main points raised in the paper.

Mr. Finsten: I should add that from my discussions with people on the telephone I found that really few studies have been done in this area. In the last five years some work has been done in Europe, but not too much has been done in North America.

The Chairman: I gather from what you have said that your brief is the result of studies which had already been made, but that few of them had been done.

Mr. Finsten: I should point out, Mr. Chairman, that we have noted most of the sources we have used.

Mr. Tait: Most of the sources are American. The literature does seem to concentrate on American material or American efforts.

Mr. Finsten: Nor is this study exhaustive, Mr. Chairman. A few of the people we tried to contact in the criminology department at the University of Ottawa were away both last week and this week. If you would like us to do further work on the subject, we would be happy to do so.

The Chairman: Honourable senators, perhaps we should now call on Senator McGrand for an outline of what he feels the study should comprise. What kind of study does he envisage? What type of people would he regard as witnesses, and what would the number of witnesses be? We should also bear in mind considerations of cost, and in terms of the feasibility of such a study we must consider not only cost, but manpower, space and time slots. There are a number of things to consider, which we will not be able to make a decision on until we have a picture of what Senator McGrand himself had in mind when he placed his motion on the Order Paper.

Senator McGrand: Honourable senators, I had hoped I had made it clear what I was interested in when I made my initial remarks. I certainly do not feel there is a need to attempt to investigate the whole field of crime. I am particularly interested in those fields which involve cruelty and sadism. What causes cruelty and sadism? That is what I am interested in.

I should like to quote the words of Dr. Menninger, one of the most outstanding men on this continent and perhaps in the world on this subject: "How can we explain man's lust for cruelty in a world in which violence in every form seems to be increasing?" I think that question, for example, would be a good starting point.

I should like to say to Mr. Finsten and Mr. Tait that, in going through the research material which they placed at my disposal, I found that I had already read that material between eight and ten years ago, but on the particular subject I am interested in the research is only beginning to be done. I refer to a particular aspect of the battered child syndrome—not what is and can be done for the battered child, but what causes the battered child. Why do parents develop a hostility to their children? So far I have found work being done by only one person on this aspect of the problem. I am referring to the recent work of Dr. Lenoski, who is a paediatrician and head of a large hospital, a paediatrics service, in Los Angeles. In his research into the

reasons why parents batter their children, he found that the babies of women who batter their children are usually born when the mother is under sedation, as, for example, in a Caesarean section, and where she is not exposed to the sight, sound and smell of the baby at the time of birth. He considers this to be very important. That is one man.

The next one I want to mention is a Japanese researcher who has been investigating children that cry incessantly. When an infant that is a day, two days, a week or a month old cries incessantly it is because there is some disturbance that we are not aware of. This Japanese investigator attached an electrode to the uterus of a woman who was nearly nine months pregnant, and recorded the sounds that went on inside it. He then took 500 children that cried incessantly and played the tape to them, individually, one at a time. All of those babies went to sleep immediately they heard the tape. This reveals something that research has not been done on. I do not think you will find this published in our libraries even yet.

Another man I want to mention is a doctor practising in Paris. I have forgotten his name. He is an obstetrician. He has recently been doing research in this field. What he does is to deliver babies in silence, with no bright lights to offend their eyes and no voices in the delivery room to offend their ears. There is only a little blue light, not a bright light, there. When the baby is delivered there is no talk, no noise, and it is then placed against the abdomen of its mother. The first voice it hears is that of its mother, and their relationship is set up in this way.

Another important aspect of this method is that the child is not beaten to make it cry immediately after delivery. I slapped many a backside because the youngster did not cry the minute he came out of the womb, but that was wrong obstetrics. In those days, too, we thought nothing of delivering a baby with forceps on its head.

A lot of the things we know about the human body are derived from what we have learned from the study of the physiology of animals. I am thinking of Claude Bernard, Helmholtz, and other such people. What they know about physiology is derived from their study of animals. Then we have our friends in Toronto producing insulin from the pancreas of a dog. Animals, of course, have been used for a long time in psychological research—rats, monkeys and so on. There are even people who feel that the more we know about the psychology of animals, the more we are going to know about the psychology of people. Take, for example, the gulls that build their nests along the shores. They hatch their eggs, and when the little gull comes out of the shell it knows its parents because it has been talking to them through the shell. Animal psychologists maintain—of course, I do not know whether this obtains in the case of humans—that animals inside their mothers' uterus communicate because they hear her. An animal psychologist told me that the only organ that is fully developed in a colt a month before it is born is the ear. Why would the ear be the first organ to be completely developed? I do not know how well the ear is developed at the time of the birth of a child—this is an area of research that has been neglected—but I would like to see research done in this field. None has been done in Canada. The Japanese have done some, but there has been no research done in Canada that I know of.

I would think that we would stimulate this kind of research in Canada and in our universities if we were to have a committee bring in the proper witnesses and then come to a conclusion. In this connection, I would perhaps

start with Arthur Maloney; he knows something about criminals. Then there is a Dr. Richmond, who was for 40 years associated with the prisons in British Columbia, and who wrote a book on this subject. I would also suggest Dr. Carl Menninger, who is the outstanding criminologist on the continent. I could think of half a dozen people.

The Chairman: Do you think half a dozen witnesses would be sufficient?

Senator McGrand: I do not think you would have to bring in the man from Paris, for example, to tell us what he did in obstetrics, but you could get a record of his work. Similarly, you would not have to bring in the man from Japan, either; you could get a report of his work and study that. Once such a study was started, we would begin to open up nooks and corners of the subject that we were not aware were present. That is the way I would go about it.

The Chairman: Senator Neiman has some questions.

Senator Neiman: Mr. Charman, Senator McGrand knows that I am very sympathetic towards his interest in this area, and, of course, anything to do with the problems of criminality and crime has always been of the greatest interest to me. I regard this field as one of my specialties. On the other hand, though Senator McGrand asked me if I would speak in support of his motion, I said I would not. I firmly believe that this subject is far beyond the ambit of a Senate committee, certainly of this committee, and I must say that I am even more convinced of it after hearing Senator McGrand's comments this morning. We are not doctors, we are not psychologists, we are not sociologists, here is this room, and I think that a Senate committee, really, could do so little in return for the time, money and effort involved in such a study that it would be useless. In my opinion, this is not what we in the Senate are here for.

I cannot, I am afraid, go along with the suggestion that our having even a superficial inquiry, which is all it could be, would stimulate research. Today, everyone is looking for research grants. Our medical schools are complaining to the government that they have been cut back on such funds. We hear of this problem constantly in our other committees. We are constantly asking the government for more money for research and are not getting it. It would be one thing, surely, to stimulate an interest in this matter, if we were to go ahead with this suggestion, though I am not convinced that we could; but it would certainly be another problem entirely to get the funds for it.

The areas it is proposed to examine are highly specialized. I have read about the Japanese experiments and about the work of the doctor in Paris who is experimenting with these new methods of childbirth; but they are not connected solely with criminality. Any child can be born hyper, but he will not necessarily become a criminal.

These are very specialized areas. As Mr. Finsten and Mr. Tait have said, the research material in connection with them is negligible, and to imagine that a Senate committee could study this vast area and succeed in putting together anything useful would be futile.

In my view, we are here to help the legislative process. I would be willing to concede that if research had been done on, say, 1,000 criminals as they are to be found in our jails and prisons today, and if thorough research had been done on their backgrounds from the day they were born, on the backgrounds of their families, their school histories, their social histories, and on the causal events leading from one

prison sentence to another, then we might have material that we as a Senate committee could examine, and as a result recommend appropriate changes in our laws and systems; but we do not have anything of the kind at our disposal, and we are not equipped to do that kind of study.

I repeat: I am thoroughly sympathetic towards Senator McGrand's interest and concern with regard to this subject. I share in it, and I agree that a great deal has to be done, but I do not think we in the Senate could do anything effective and I do not think we should attempt it.

Senator McGrand: May I ask, if we do not trigger that interest, who will?

Senator Neiman: Well, I think we have, as you say, our doctors, our gynaecologists, our obstetricians, our psychologists. We also have criminologists. All these people are experts. Surely we have to wait. We can express our concern and say that we wish that these particular experts would get on and give us some more information to work with, but we cannot do it for them. We are simply unequipped to bring all that information together and do anything effective. We are working with government money, and we are restricted, and we have to do things that we can be assured will be effective. We have to do things that we know are worthwhile, and I do not think we can do anything worthwhile in this area.

Senator Norrie: I am inclined to agree with certain of Senator Neiman's points, but I think that as a committee we can lend great stimulus to this sort of thing and perhaps promote deeper studies in other fields and really be a lever to legislation in this regard. I think we have a real field here, and I do not think we should turn it down. I know it is very much a specialized field and I agree with everything that Senator Neiman says, but I do think that we are not picking it up and giving it the push that it should be given. If we were doing so, then we would not have so much crime. I feel these studies should be promoted. No matter how little it lends to the solution of the crime problem, we should try to promote everything we can in this regard.

The Chairman: I do not think anybody would disagree that a study is desirable, but what we have to decide this morning is as to the feasibility of having it done at this time.

Senator Croll: Mr. Chairman, anything we want to do is feasible. I do not think we should worry about that aspect of the situation. If we want to do it, then we simply do it. Within certain limitations, we can do anything that we want to do, but the major questions are as to how we do it and what we are looking for. I have been giving consideration for weeks to trying to decide what one can do in this field which is a great unknown, and what ran through my mind was this. I thought it would be a good idea if we drew up a strong resolution pinpointing what we had in mind and sent it over to Mr. Lalonde and said to him that the committee feels that this study should have been done long since, and that he should do it. We should let him know that if he does not do anything about it within a reasonable time, then we intend to do something about it.

Senator Norrie: How is Warren Allmand going to make any advances in his parole system or in his crime program if we do not assist him? These fields are just as important to him as they are to us.

Senator Neiman: But he does not have the facts.

Senator Norrie: But somebody has to get the facts and somebody has to give him the facts.

Senator Neiman: I am saying, and I am certainly subject to correction, that a birth trauma does not necessarily make a criminal. That comes forth from every bit of research that has ever been done on this. So how broad are we going to sweep this area?

Senator Norrie: We could find out whether it is good or not good.

Senator Neiman: The birth trauma? I think we would look like a bunch of idiots, quite frankly, if we were to sit around here discussing birth methods. I say that because even the doctors don't know a great deal about this. Of course, there are problems arising from brain damage, we all know that, but brain damage in itself does not make a criminal; it can cause problems. All I am saying is that we could get into a subject that would make us look silly because it is so vast.

Senator Bourget: Mr. Chairman, I agree thoroughly with what Senator Neiman has said. I have the greatest respect for what Senator McGrand is trying to do, but I think Senator Neiman has explained the problem very clearly, because as we were told by a researcher in the library, not too much research has been done on this particular subject and I don't know who among our senators here would be a specialist on that.

Another question arises as well: What about the manpower to do the work in the Senate? We already have three joint committees—the Special Joint Committee on Employer-Employee Relations in the Public Service, the Special Joint Committee on the National Capital Region, and the Standing Joint Committee on Regulations and other Statutory Instruments. Besides that we have, as you know, the Special Senate Committee on Science Policy. Yesterday in that committee we were told that they are cutting the expenses on research, so if this committee should need some money, where are we going to get it? I am all in favour of research, and I think that this is a very important problem that has been raised by Senator McGrand, but I do not think that we are the people who can do that kind of research at this time. From what I have heard and from what I have read, there has not been enough research done on that, so we would have to rely completely on witnesses or on experts, and where are they? There are not too many of them.

Senator McGrand: Mention was made a few moments ago of the question of head injuries. I am sure I can agree with this, but in my time in practising medicine, I remember coming across four mentally disturbed, hostile people who created a number of problems. The history in each case showed that they were delivered with forceps, and I could still find the indentations in the skull which the forceps had left there 20 years previously. This is a field that has not been researched, and it should be researched.

Senator Croll: This is a field that has not been touched. It is a very important field, but I have never followed it up closely. If we were to get into it, then we would really be jumping into the darkness, but there are facilities in this country, and if we were to say that the committee had decided not to proceed with this at this time but that we wanted the department to make a special study of this and to let us know what the findings were, we might find that some progress had been made on this.

Senator McGrand: Let me reply to that for a moment. The Department of National Health and Welfare, and the people who have been running it for years, should be aware of this, but they are not. If we do a little research and call it to their attention, then perhaps we will get action, but the stimulus has to come from outside the Department of National Health and Welfare.

Senator Neiman: Senator McGrand, the other point is that this is not just a question for the Department of National Health and Welfare. You are touching on all kinds of areas here that are totally provincial in nature. We would be touching such a very broad spectrum of problems that I can understand why that department has not gone into it in great detail, with the background and all the problems, because it crosses many boundaries, provincial and federal. It would be practically impossible for them to do it. Perhaps the Solicitor General's department can stimulate a study in that area, but if they do they will certainly have to go back and get the co-operation of their provincial counterparts to get the material and the background. It is a vast subject, and I agree that there have been many people who obviously have suffered brain damage and have become hostile as a result of, shall I say, forcible entry. On the other hand, there are many more who have simply become disturbed or a little hyper as a result of these birth defects and traumatic experiences, but they do not all result in criminality.

Senator McElman: Senator Neiman's comments concerning a conflict and crossing lines with the provincial authorities, in my opinion, are not too relevant. If that were the case, in the field of agriculture, for example, we would not be doing any of the rather terrific work that is being done by our agriculture committee. There is a responsibility for agriculture at the federal government level, which is co-operative with the provinces and seems to work well. The same applies in the field of health, of course, and a great deal of the activity on the part of the federal health department is totally in co-operation with the provinces. We are not talking health here, but criminality and its causes.

Senator Norrie: But that involves sick minds, just the same.

Senator McElman: Yes, but the basis is that we are talking of criminality and the causes of it. There are many causes, one of which is in the very broad field of health. From what Senator McGrand has said, the focus of the study at which he was looking carries us to the health department, largely, although it would also entail as it went on, I am sure, studies and information to be obtained from the Department of the Solicitor General and perhaps, the Department of Justice. It would not be restricted to one field and would be a very broad study.

Although I am not a member of this committee, I was involved in the debate in the house. However, in my opinion, the committee is not in a position to make a decision. I do not believe you have sufficient information before you. The suggestion which I put forward in the house was that there must be research information available, at least in some of these areas. It is fine for this committee to obtain a summary of what may have been done, but it seems to me that before it can make any real decision now the committee must have the summary prepared by the staff. It has been suggested by Mr. Finsten that he knows of further information that could be obtained for the committee. It seems to me that that infor-

mation should be brought before the committee or, again, a subcommittee of the main committee, and a determination made as to whether there is useful information now available which would support the proposition of Senator McGrand to motivate, if you will, the Department of National Health and Welfare and whatever other departments of the federal government need to be motivated in this direction.

The Chairman: Yes; I was about to make a comment earlier, following Senator Neiman's comments. I had formed a different interpretation of Senator McGrand's motion, my understanding being that he wished a subcommittee to be appointed to find out what research has been done and is now available and the findings that would enable people to spot the criminal potential in children at a very early age, at which time it could be channelled off and prevented. So my understanding was that he desired to see what already exists that could be used in that manner, and determine the gaps which need to be filled. That would not be our job. Perhaps it would encourage the Department of National Health and Welfare to do what they could along those lines and find out what is already being done and who is working on this type of problem now, so that we would have some sort of picture to place before our own people who are wrestling with the crime problem. As I understand it, it was aimed at prevention, not wide research, nothing that we would do, but I would think that we would be sufficiently intelligent to understand the findings of those who have conducted research. We do that in science policy and other areas. That is a slightly different understanding from that of Senator Neiman.

Senator McGrand: Why does a boy of four years of age with frustrations become a psychopathic killer at the age of 24? What happens? There are people such as Margaret Mead. While I understand she should not be invited, she could give us a good deal of information on the history of this subject. With respect to the development of cultures and their growth, Menninger is available. I could think of half a dozen of the top people who could give us the direction we need, and if they were to state that this is too broad in scope for us, I would not disagree.

Senator Croll: Mr. Chairman, in my opinion the meeting can deal with this. We are a committee here. Suppose you appoint a subcommittee of three or four for the purpose of filling these gaps. They could sit around, call witnesses and determine what exists. It would be inexpensive. We are sitting here every day and it is simply a matter of reporting. The rest could be done with one secretary and witnesses could be invited. The subcommittee could feel the now, whom and what in precise terms, then bring it to the whole committee for the purpose of reporting their findings as to what could be done and how it should be done. Senator McGrand can present anyone he wishes to this subcommittee, which would report to the whole committee, and we would have made progress.

The Chairman: The only problem is that if Senator McGrand wishes to have Dr. Menninger appear, that involves money.

Senator Croll: No, it is not that; once we decide on a certain expense, we have the funds for that. This would not be a great expense. There are three or four persons he can bring down here, and it would cost maybe a couple of thousand dollars. No one is worrying about that sort of money; we are worrying about big money.

Senator Lang: Mr. Chairman, I am not a member of the committee but I am here this morning because Senator McGrand inflamed my interest in this subject matter due to the proximity of our offices. I know even less about this than about fisheries and agriculture. I was interested enough to come this morning and have been interested to hear the various points of view expressed by the members of the committee. I am afraid that maybe this area of inquiry falls outside the ambit of the functions of a legislative committee. In other words, a committee of the Senate is a committee of Parliament involved in law-making or government policy-making. With respect to an inquiry of this nature, I find it difficult to see how any results of such an inquiry could bring forward proposals for legislative changes, or changes in government policy. In my opinion, the danger we are in, in this situation, is that of slipping over the bounds of the jurisdictional parameters of a legislative committee into an area of either research or publicity for a very worthwhile concern. That is why I would be opposed, I am afraid, at this time, to the use of a Senate committee as a vehicle for this purpose, worthwhile as, I agree with all the members present, the concern is for this very real problem.

Senator Smith: Mr. Chairman, if I may say just a word. This is a subject that the older colleagues of Senator McGrand have heard about for as many years as he has been here. We have allowed all those years to go by and, according to the report that we have had and a reading of the speeches in the Senate, Senator McGrand does not see any doors opening up to expose more knowledge of the subject now than have opened during quite some years. I did not think the intention of the motion in the first place, and in its amended form, as I understood it, was to have this standing legislative committee undertake a study. Reading from the source of this material—that is, the agenda—it says:

To look into and report upon the feasibility of a Senate Committee's inquiring into and reporting upon crime and violence . . .

and so on and so forth. It did not mention this particular committee.

I think this is a very appropriate committee because of its title and the fact that all bills relating to health, welfare and science, pensions, and a number of other things that are enumerated in the rule book, go through us. This committee should go only so far as it now appears to be going, which is to see how big the subject is and whether a Senate committee should look further into it.

I would suggest that we adopt a holding technique for the time being. I understood clearly from both Mr. Finsten and Mr. Tait that they regretted that several experts in the field, who are Ottawans and attached to the University of Ottawa, are not in the city right now and are busy with other projects. In my view, we should delay making any kind of decision until we can obtain the opinion of local people who are considered experts by others who are expert in this field, and until we can assemble more information.

This is a very useful document, and I am sure that both Mr. Finsten and Mr. Tait would be the first to agree that it is not sufficiently complete to give us an opportunity to understand how heavy a task this will be or to judge the amount of information that might be available.

I would look for experts who have opinions of their own which they might wish to express at another meeting of

this committee; or we should perhaps adopt the suggestion of Senator Croll that the matter be referred to a subcommittee.

Senator Croll: I like your suggestion better.

Senator Smith: Then, for the time being, I would suggest that this be the vehicle through which this matter should be sieved, and whatever comes out through the sieve we should either throw away or recommend that someone at some time undertake this study. It might be a special committee of the Senate or we might find the subject to be of such importance that we will point out, not only to the Minister of National Health and Welfare but also to the federal government in general and other governments in Canada, the great need for this kind of research.

I would hesitate to start now to convince taxpayers that a little extra money to be spent in this area of research is completely unobtainable at this time. Apart from the inflationary situation, my understanding is that medical research in this country has not been cut back but is being held at more or less its present level for the time being. A great deal of federal money is going into research in this country. Of course, a number of jobs are involved, and that is important. People who are studying medicine are like those who are studying any other subject. They become their own pets too, and they are like those who produced those glossy representations for the Public Service and came up with the kookiest kind of—I am not referring to the LIP grants, they were not so bad, but some of the OFY grants involved some pretty bad material.

If someone does not start to take the cover off the pot and see what is in this, we will have a worse society than we would otherwise have. I did not intend to go that far.

Senator Croll: Mr. Chairman, I do not need to move, but I suggest that we adopt the suggestion made by Senator Smith. Until we obtain some further research along the lines indicated, I suggest that the committee adjourn at this time.

The Chairman: It has been suggested that we defer any decision until we have more information.

Senator Neiman: Mr. Chairman, I wonder if it would be helpful to call in people from the School of Criminology, or some area like that, and have them point out the areas in which they think our research is deficient, where the government should be spending more time. We should perhaps obtain their opinions on how we should be going about something like this, or hear what kind of recommendations they have that we should urge upon the government regarding research in this area.

Senator Croll: Mr. Chairman, once we have the result of this research, that might be helpful; but let us first see what there is.

Senator McElman: As has been done by the Special Senate Committee on Science Policy—which is not made up of scientists, by the way.

The Chairman: Is it the wish of the committee that the researchers continue their research and that we now adjourn until the call of the chair?

Hon. Senators: Agreed.

The Chairman: Before we adjourn, I would refer the committee to the two briefs which have been prepared by

the researchers. Should they be appended to the minutes of today's proceedings?

Senator Croll: It is not usual.

Senator Neiman: No.

Senator Croll: We have never done that before.

Senator Smith: At the bottom of page 1 of the brief it says "Not to be published." This is for the use of the committee.

The Chairman: The meeting is adjourned.

The committee adjourned.

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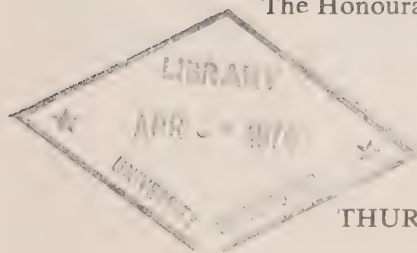
THE SENATE OF CANADA

PROCEEDINGS OF THE

STANDING SENATE COMMITTEE ON

HEALTH, WELFARE AND SCIENCE

The Honourable C. W. CARTER, *Chairman*



Issue No. 13

THURSDAY, MARCH 4, 1976

Second Proceedings on:

The Study of the feasibility of a Senate Committee inquiring into and reporting upon crime and violence in contemporary Canadian society.

(Witnesses: See Minutes of Proceedings)

THE STANDING SENATE COMMITTEE ON
HEALTH, WELFARE AND SCIENCE

The Honourable C. W. Carter, *Chairman*

The Honourable M. Lamontagne, P.C., *Deputy Chairman*

AND

The Honourable Senators:

Argue	Inman
Blois	Langlois
Bonnell	Macdonald
Bourget	McGrand
Cameron	Neiman
Croll	Norrie
Denis	*Perrault
*Flynn	Phillips
Fournier	Smith
(<i>de Lanaudière</i>)	(<i>Queens-Shelburne</i>)
Goldenberg	Sullivan—(20)

**Ex officio* member

(Quorum 5)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate of Canada, Thursday, 18th December, 1975:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator McGrand, seconded by the Honourable Senator Eudes:

That the Senate considers it desirable that a special committee of the Senate be established at an early date to inquire and report upon crime and violence in contemporary Canadian society.

And on the motion in amendment thereto of the Honourable Senator McElman, seconded by the Honourable Senator Carter;

That the motion be not now adopted but that the subject-matter thereof be referred to the Standing Senate Committee on Health, Welfare and Science,

After debate,

In amendment, the Honourable Senator Asselin, P.C., moved, seconded by the Honourable Senator Choquette, that the motion in amendment be amended by removing the period at the end thereof and adding the following words:

"and that the Committee be instructed to look into and report upon the feasibility of a Senate Committee's inquiring into and reporting upon crime and violence in contemporary Canadian society and that, if the Committee decides that such a study is feasible and warranted, it be further instructed to set down clearly how, by whom, and under what precise terms of reference such a study should be undertaken."

After debate, and—

The question being put on the motion, in amendment, of the Honourable Senator Asselin, P.C., seconded by the Honourable Senator Choquette, to the motion, in amendment, of the Honourable Senator McElman, seconded by the Honourable Senator Carter, it was—

Resolved in the affirmative.

The question then being put on the motion in amendment of the Honourable Senator McElman, seconded by the Honourable Senator Carter, as amended, it was—

Resolved in the affirmative."

Robert Fortier,
Clerk of the Senate.

Minutes of Proceedings

Thursday, March 4, 1976

(17)

Pursuant to adjournment and notice the Standing Senate Committee on Health, Welfare and Science met this day at 10:00 a.m., the Chairman, the Honourable Senator Carter presiding.

Present: The Honourable Senators Carter, Croll, Denis, McGrand, Neiman, Norrie and Smith (*Queens-Shelburne*).
(7)

Present but not of the Committee: The Honourable Senators Fournier (*Restigouche-Gloucester*) and McElman.
(2)

In attendance: Mr. Hugh Finsten, Research Officer, Research Branch, Library of Parliament.

The Committee resumed consideration of its Order of Reference dated December 18, 1975, "that the Committee be instructed to look into and report upon the feasibility of a Senate Committee's inquiring into and reporting upon crime and violence in contemporary Canadian society and that, if the Committee decides that such a study is feasible and warranted, it be further instructed to set down clearly how, by whom, and under what precise terms of reference such a study should be undertaken".

The following witnesses from the Department of Criminology, University of Ottawa, were heard:

Dr. Michael Langley;
Professor Bryan McKay.

Mr. Finsten introduced the witnesses; each made a statement and then answered questions put to them by Members of the Committee.

At 12:35 p.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Patrick J. Savoie,
Clerk of the Committee.

The Standing Senate Committee on Health, Welfare and Science

Evidence

Ottawa, Thursday, March 4, 1976.

The Standing Senate Committee on Health, Welfare and Science met this day at 10 a.m. to look into and report upon the feasibility of a Senate Committee's inquiring into and reporting upon crime and violence in contemporary Canadian society.

Senator Chesley W. Carter (*Chairman*) in the Chair.

The Chairman: Honourable senators, we are fortunate to have with us this morning Dr. Michael Langley and Professor Bryan McKay from the University of Ottawa Department of Criminology. We also have Mr. Finsten, our researcher whom you have already met. I will ask Mr. Finsten to introduce our witnesses. I understand that they will be making an oral presentation. I would suggest, to save time, that we hear from both of them and then proceed with questioning. Is that agreed?

Hon. Senators: Agreed.

Mr. Hugh Finsten, Research Assistant, Research Branch, Library of Parliament: Mr. Chairman, I do not think the two gentlemen have had sufficient time formally to prepare anything, but they are certainly prepared to answer any questions. Next to me is Dr. Micheal Langley, and on his right is Professor McKay. Perhaps, Dr. Langley, you would like to describe your background.

Dr. Michael Langley, Department of Criminology, University of Ottawa: I have a B.S. degree in psychology, an M.S. in clinical psychology, and a Ph.D. degree in sociology. I worked for a year as an administrator of a childrens' home in the United States. I am from the United States. I am in my second year in Canada on a working visa. I say that I have received my degrees from the United States and gotten my education in Canada. I have worked for a year as director of a childrens' home for dependent and neglected children. I have worked for two years in a postgraduate school with youngsters with learning disabilities, in an educational-medical-clinical centre. I have done research and publications in the area of juvenile delinquency and justice. I have taught at the community college level and at undergraduate and graduate level. And I have done some consulting at juvenile courts. If I have any qualifications, that would be it.

Professor Bryan McKay, Department of Criminology, University of Ottawa: I am Toronto born. I spent five years in the Royal Canadian Air Force and on leaving the Air Force went to university. I have just completed 10 years at university. In the interim I have been involved in projects such as working for five years in the Ontario training school system. My research interests vary from adolescent sociopathy, psychopathy, through theories of social justice and, more recently, predictions of problems at institutions such as regional detention centres. That has been my most recent research interest.

The Chairman: Dr. Langley, I assume that Mr. Finsten has explained to you that our general terms of reference are to look into and report upon the feasibility of a Senate committee's inquiring into and reporting upon crime and violence in contemporary Canadian society. However, in our meeting this morning we are concentrating on the narrower concept of what are the possibilities of recognizing criminal potential or diagnosing the possibility of criminal tendency in the very young, perhaps even before the child is born but certainly at a very early age, in order that some remedial action might be possible. You might confine your remarks within the framework.

Dr. Langley: Yes, Mr. Chairman. Perhaps one of the first things we have to come to grip with in this country at this point in time, despite the fact that we have a very high desire to predict criminality, delinquency and control, both our knowledge base and our technology—and I would go so far as to say our clinical system and political ideology—probably do not allow us to match that kind of desire with effective intervention in the following sense specifically.

Mr. Finsten forwarded to me the previous deliberations of the committee on the topic of crime causation and violence in Canada which I read with considerable enthusiasm and interest. In reading the committee's proceedings, several things came to my mind, in particular that it appears that your committee, at this point in time, is interested in the whole issue of dangerousness, the dangerous offender or, if you will, the dangerous pre-offender, and what kind of interventions might be developed, what kind of knowledge base might be developed to constrain this type of dangerous offender, within our midst.

The dangerous offender, in the committee proceedings I have read, is referred to as a psychopath or, to use Professor McKay's term, a sociopath.

Something that we have to be very concerned about and very hard-nosed about is that in the whole area of crime control, it is extremely important to look behind the labels that we use. It is one thing to say we have to have crime control, or that we have to have peace and security, but we have to know exactly what those terms mean. One of my major concerns in relation to your concern about predicting dangerousness at the childhood level for purposes of predicting subsequent criminal behaviour, be it homicidal or whatever in nature, is that we simply do not enough at this point in time to be able to make those kinds of predictions.

I was very impressed with a recent letter to the editor of the *Globe and Mail* by a criminologist at the University of Toronto, in which the writer cited some literature which indicates that the best we apparently are able to do right now in predicting dangerousness is about one in three, which is to say that for every person that we accurately predict as being a dangerous criminal, we are in danger of mispredicting two. That is not a very good percentage. I think

we have to be willing to live with a good deal of restraint in this area, simply because we do not have the knowledge base right now that allows us this kind of governmental intervention.

Senator McGrand: You are familiar with the work done by Dr. Barry Boyd at the hospital for the criminally insane at Penetanguishene, are you?

Dr. Langley: In general terms, yes.

Senator McGrand: I take it you followed, as did everyone else, the recent inquest in Ottawa regarding the high school shooting. Looking at what was revealed at that inquest, what areas of human behaviour do you feel should receive first priority? Looking back at that inquest and what we got out of it, what are the areas of human behaviour that require priority in terms of investigation? Would you, for example, look at the area of gun control?

The Chairman: Senator McGrand, before you came in we agreed that we would hear from both witnesses before starting on a general line of questioning. Perhaps Dr. Langley can think about his reply to your question while we hear from Professor McKay.

Professor McKay: Thank you, Mr. Chairman. My comments will be restricted to my reading of the text. I was very interested in Senator McGrand's comments during the previous committee meetings. Obviously crime and violence concern all of us, seemingly more so as time goes on. I think we are to some extent living in an element of fear. Fear, as psychologists will tell you, usually stems from uncertainty, which again tends to have an anxiety factor in fear of the unknown or the uncertain. We are wanting to know what causes crime, how to control crime.

One thing in defence of the social sciences, as Dr. Langley pointed out, is that we really do not know a lot. We do a lot, but we have not yet had many answers. It must be remembered that the social sciences are really in their infancy, very much in an embryonic stage, and just beginning to develop. As Senator McGrand pointed out in one of the debates, work on sociopathy has gone on for over 100 years. It goes back to Dr. Benjamin Rush in New England. People like Dr. Benjamin Rush began to work in the 1870s and 1880s and an enormous amount of research has been done on that. We still have not had any solid answers on sociopathy.

Crime, as Dr. Langley pointed out, is a very complex phenomenon, it is multi-faceted. We have sought causation for approximately one hundred years, if not more. One of the things we have begun to realize is that causation tends, in many cases, to be misleading, because crime is in fact a very complex phenomenon, as are criminals and criminal behaviour.

One of the problems we have had, which is now beginning to dissolve a bit, is that we are just beginning to develop the tools, technology and statistical sophistication to be able to understand this complex phenomenon; we are beginning to develop models.

Let me give you an analog to the position we are in. It was said that Professor Einstein perceived the theory of relativity many years before he had the tools to present it to people. It took him something in the order of ten years to be able to develop the expertise and present his theory of relativity, but he had some comprehension of the problem before that.

My reading of the text—unfortunately very cursory because of time considerations—indicates that it is very interesting in its terms of reference. I would like to take you a little bit aside from this just to give you my approach, and suggest that we have done a great deal of work in this area over 100 years or so. I would suggest that one of the things the committee could do is perhaps let us continue to do the work, but help us. I think you can help us in several ways. Right now the attractiveness of being involved in research in activities like this is not very high. The salaries for professors and so on are atrocious. I do not make as much as a bakery truck driver, and it required ten years of deprivation of myself and my family to get to the position I presently have. The number of graduate programs in this area that encourage research is very limited. In fact, there is only one Ph.D. program for criminology, right now in Canada, and that is in Montreal. We are working towards getting more, of course.

Senator Croll: Not in London, at Western?

Professor McKay: There are no Ph.D. programs in criminology in those areas. We must make research and teaching in this area attractive. For example, we must at least provide "bread and butter" for those who would like to continue at it. The prevailing political climate appears to be one in which, perhaps traditionally, the universities are suffering the axe on budget priorities and so on. Grants for research are being cut back; support of all kinds is in fact being cut back. In the province of Ontario the Ministry of Corrections has a freeze on hiring right now. It is very difficult to attract students in this area, and there are very many students who would like to continue doing research in these kinds of areas. What I think we have to do is get support for the funding of research, especially risky research, the kind of research, as Senator McGrand pointed out, done by the Japanese investigators.

These methods tend to be used sometimes because people want to take risks in research. It tends to be a handy item.

There was a recent case in the United States where Senator Proxmire used an issue of a grant that had been given to a very respected person in the area of the social sciences, Dr. Ellen Berscheid, of the University of Wisconsin. This was a grant given to study romantic love and that was seen as a waste of the taxpayers' money. She is a very respected investigator in her profession. Incidentally, Dr. Berscheid's position has been, along with many other new investigators, by the way, that we can learn a great deal by studying the healthy, in health, welfare and science, rather than seeking pathology and illness. We can, in fact, learn a heck of a lot by studying these kinds of things.

Another area that I would suggest is one of the ways of reducing fear and uncertainties would be to fund an educational program. That tends to have a very ameliorative effect. Understanding the issues, understanding what crime is all about, understanding the data and understanding what these effects really are would have an enormous effect on the community. Institutions do this as part of their service. They try to go out and educate the community wherever possible.

We would suggest, again, that we encourage groups, community interested groups and so on, to develop a "find out" philosophy, if you will. As an example of this, I saw a recent television commercial by the American association of retired persons who put out an anti-crime handbook on how to minimize the possibility of crime occurring to them.

In conclusion, I would say, let us learn from our neighbours to the south. Ten years ago, law and order became an issue. They declared a war on crime, and in retrospect it appears that crime has won. I do not think that the "war" was terribly successful.

We appear, from recent legislation before the house right now, to be heading in the same direction. I am somewhat concerned about that because our American neighbours learned one lesson out of their ten-year war on crime, and that is that they must set priorities.

There are statistics, for example, where 70 per cent of the people in Quebec prisons right now are there for non-payment of fines, and 50 per cent in Nova Scotia in 1974 were there for non-payment of fines. We have to learn to set priorities with respect to crime. I think that then we will resolve a lot of our difficulties.

Senator McElman: Did you say 70 per cent in Quebec?

Professor McKay: That was a 1974 statistic.

Senator Smith (Queens-Shelburne): Seventy per cent of the people in prison or in jail, incarcerated in other words, for not paying fines, and 50 per cent in my province of Nova Scotia?

Professor McKay: That is what I have been told was the case for 1974. It is a rather striking statistic.

Senator Smith (Queens-Shelburne): I must find examples of that. I do not know of any.

Professor McKay: I will go back and check.

Senator Smith (Queens-Shelburne): That is all right. I was very interested in that.

Senator McGrand: Mr. Chairman, I do not think we really have the time to have answered all the questions that I would like to ask. I understood you to say the uniqueness of the work you are doing needs the support of this group. I understand that for every dollar spent in cancer research there is about one cent spent in the type of research that you would like to carry on. I think that is about right.

Now, going back to the Poulin inquest, the question of war games was brought up. These boys are playing war games. What connection do you see between target practice and war games? A lot of people consider target practice to be a war game. It is common for these people, who go out on shooting sprees and kill half a dozen people, to have just come back from target practice. Some time ago I read an article on this, and the author said, "A man's eyes grow dark when he looks down a gun barrel." Now, have you anything in the research that you have read that deals with this field, target practice and people going out and committing mass murders?

Professor McKay: I am in no position to summarize the work of this particular man. Dr. Leonard Berkowitz has done considerable research on the accessibility of guns or even having guns in the immediate area, or, in fact, the firing of guns leading to later aggression. Again it is difficult to summarize all of his findings. It is complex. One of the major determinants is not the personality determinant at all; the situation appears to determine the events more than the personality variable. I do not think he has found any real personality differences in those who tend to use guns when they are available as opposed to those who do not.

Senator McGrand: I had the impression that in the case of some murders something triggered the person's desire to kill, as, for example, having been out target practising the day before. Have you read any papers or done any research on that subject? In your paper you discuss the article on the importance of infancy, and the possibility of damage to an infant because of lack of oxygen during birth. That article was written in 1966, ten years ago. What research has been carried out as a follow-up in the intervening time?

Professor McKay: I believe you are referring to Mr. Finsten's paper.

Senator McGrand: Yes.

Professor McKay: There is research being done right now at the University of Waterloo. There is a doctor from Sick Children's Hospital—I cannot remember his name—who has been conducting research on primates. If you are referring to the oxygen transfer through the placenta, that arose out of the concern with the consistent correlation—which tends to crop up in the literature—between low birth weight and later delinquency. Is that what you are referring to?

Senator McGrand: That is part of it.

Senator Neiman: Mr. Chairman, I feel the remarks of our witnesses this morning confirm what I have felt all along about ourselves as a group trying to conduct this type of inquiry. If I may put the question again to Dr. Langley: Does he feel that there is any useful supplementary role which a Senate committee could play in this field? I am sure you realize how a Senate committee is constituted. Apart from our ability to encourage—and I thoroughly agree that as legislators and leaders and parliamentarians we should perform that function—do you feel there is anything else we can usefully contribute?

Dr. Langley: Yes, but you may not like my answer. In the last ten years in North America there has been a fairly quiet but quite dramatic revolution in the social sciences approach to criminality and crime control. As with any progress, there are costs—assuming that what we have done in the last few years has been progress.

One of the major changes in the focus of emphasis, senator, has been away from an interest in criminal causation, research and theory, to an interest in the societal reaction towards crime and criminality. As with any movement, there are excesses. Right now we seem to be at a point where the pendulum has swung far away from criminal causation as a high yield area of information and has moved very much towards the whole issue of the current response to criminality in Canada and in the United States. Much criminological thought is encouraging us to take a look at some of the assumptions, some of the procedures, some of the cost benefits and some of the effectiveness associated with the current response to criminality in Canada and in the United States.

That response at this point, is a combination of economics (fines), incarceration, imprisonment, restraint on physical freedom, probation, parole, and things like that. So that I would very much like to see a group like this, the Senate committee, develop for themselves some kind of educational forum. You people, potentially, have a tremendous role to play in public education, and the way you could play it would be by asking questions that are in line with what the social sciences are doing in the mid-seven-

ties. It works both ways. Not only do we need your kind of support, politically, economically, or otherwise, but we think you need our support in terms of expertise, in terms of a coalition, if you will, between people who know and people who do, if I can make this distinction—incomplete though it may be.

As I was sitting here talking, I was thinking how neat it would be for me to volunteer my time and my energy to run, say, a six-week course on the sociology and psychology of crime, here on the Hill, just meeting somewhere and letting you know where the social sciences are right now, in terms of what we know, and what we do not know, and what we can realistically expect from this body of knowledge and research in the next five years. You see, I fear we may be looking to the social sciences for things that the social sciences cannot give us. I do not see a committee of this type having much of a role to play in, say, the direct delivery of services, or research; but I think the need for education of public officials is almost paramount with me.

Senator Neiman: I agree.

Dr. Langley: I would be willing to engage in such an endeavour because I think there is a lot I could learn from you all.

Senator McGrand: You would have to have something settled on this first, however. You could not come and just wonder around the corridors looking for a group to talk to.

Dr. Langley: That is true. I would like books, bodies and commitment—"B.B.C.", if you like.

Senator Norrie: Live bodies or dead bodies?

Dr. Langley: Looking around the room, I see only live bodies here.

Senator McGrand: I wonder if I could ask this...

The Chairman: Excuse me, Senator McGrand. I do not think we gave Dr. Langley a chance to answer the first question you put.

Dr. Langley: I cannot recall the question; I am sorry.

Senator McGrand: It was about the inquest in Ottawa.

Dr. Langley: Could you tell me a little more about that?

Senator McGrand: It was the inquest conducted here on the Poulin case.

Dr. Langley: The high school youngster. Yes?

Senator McGrand: Anyone following that inquest in the newspapers would naturally come to some conclusion, and what I wanted to know was, what area of human behaviour would you feel you should investigate and give priority to?

Dr. Langley: Follow my answer very carefully, because I am going to try to document what I said to Senator Neiman about what I meant with regard to where the social sciences are going in terms of criminality research.

The first thing that I would investigate with respect to that inquest would be the investigators. I was alarmed, I was chagrined and I was disgusted with what I thought to be an incredibly politicized inquest in which certain vested interests, all the way from gun control to more coercive containment of youngsters, used that inquest as a political podium. I felt that that inquest was more concerned with

the development of a political atmosphere conducive to subsequent legislation than it was with developing a broad-based, fact-finding, well-substantiated report. In the whole area of criminology, some of the things we are becoming increasingly interested in are those actually served by criminological-related legislation. That is to say, the kind of environment that has to be created to get that legislation passed, the kind of environment needed to fund the kind of legislation in crime control programs that we want, so that in terms of your question, I am less concerned with the behavioural correlates, behavioural associates and the behaviour related apparently to the Poulin youngster's homicidal and suicidal acts, and I am more concerned with the community climate that was generated by a combination of a highly politicized inquest hearing and the mass media exploitation of that hearing. That is the kind of research, that is the kind of analysis and study I see us being able to do. That youngster is dead and gone, and I am not sure what an inquest, after his death, into his behaviour can really tell us about effective crime control, for example.

Senator McGrand: That is right, but going back to the question of guns and the number of guns we have in Canada, what sort of gun control do you think we should have that would help to eliminate this sort of thing? Do you think there is any research which should be done into the use of guns? That goes back to what I mentioned earlier, that a man's eyes go dark when he gets a gun in his hand.

Dr. Langley: I can only answer that question with my opinion, and I am not at all sure how valuable that will be. If you want my opinion on gun legislation, I shall be glad to offer it, carefully paraphrasing it and qualifying it with the comment that it is only my opinion.

I do not believe that gun legislation can purchase for us the security and protection we want. When you compare that with the loss of freedom of individual citizens to make their own decisions about gun usage, gun possession and things of this nature, I think that one of the things that we are coming to grips with in criminology is the inherent limitation on the criminal sanction. This is best paraphrased, if you will, by the old saying, "You can lead a horse to water, but you can't make him drink." For my own purposes, I would not turn to the government to protect me from my fellow citizens' indiscriminate, if that is the appropriate word, use of guns or any other instrument that can maim me, because the thing that always intrigues me is that on a per capita basis automobiles constitute a much greater danger to me and to many of our citizens than do guns. No one is suggesting that we outlaw cars. The emotional atmosphere surrounding guns, gun usage, gun legislation, I believe—and it is only my opinion—deflects concerned attention from deeper issues related to criminality. That is to say, in summarizing, that there is a large area of criminology concerns no longer associated with what caused the Poulin boy to do what he allegedly or actually did, but rather what caused the Ottawa community to react the way it did.

Senator McGrand: Well, neither you nor I nor anybody around here can control how the press will exploit something like that. But both guns and automobiles are part of our culture, have been part of our culture for a long time and will continue to be. Did you mean that you would like to see something grow into our culture, to become part of our education system, that will enable people to train

themselves toward the less violent existence, or something like that?

Dr. Langley: I did not say that, but I surely agree with your position.

Senator McGrand: Most people refer to it as humane education. Are you familiar with the work done at Tulsa University by Dr. Stuart Westerlund?

Dr. Langley: No, sir, I am not.

Senator McGrand: I get all his material. There is a feeling that if you are going to develop a culture that is worthwhile, you have to introduce it into the school system in the early life of the child. I would define the words "humane education" as ecology plus morality. Is that not so?

The Chairman: Do you have anything to add, Professor McKay?

Professor McKay: In support of what has been said, I was a product of the Ontario school system a number of years ago. When in Grade 10, I was taken out, as part of my compulsory education, and put into a uniform, given a gun and marched up and down the school yard. It was also compulsory, in Grade 12, to do the same thing. It was part of the education process at that time.

I mentioned, in my opening remarks, that I joined the military at a very young age. I was about 17 years old. I spent a lot of time in front of targets, shooting. I have not had any real desire to go out and kill as a result of that. I am not even sure that I did not really enjoy the experience. It might have been the little amount of adrenalin that rushed through me, but I quickly got over that.

I am in agreement with what Dr. Langley is saying, in terms of the early education process, or in terms, if you will, of more humane education.

Senator McElman: Mr. Chairman, may I make one point? I am one of those who are highly critical of our education system across the country, in some of its aspects. One fact has come through to me in recent times, which has a bearing here. When I went to school in New Brunswick, I did my stint with the rifle, as did the witness. I lived in a rural community. Guns were a part of family life. One might say that one gained the impression when very young that hunting was a good thing to do. Having been raised in that milieu, I enjoyed hunting very briefly. I still do shoot birds—partridge; but that is the full extent of my hunting.

For many years I felt it was a very bad thing if I did not shoot two deer every fall. I now have six grandchildren and they started first by asking embarrassing questions about my hunting. They have asked me—and this, I assume, has come out of the school system—why I should shoot deer. I have not hunted deer now for six years. However, I used to feel almost that I had to hunt deer.

Although I am a strong critic of the school system, there has to be something coming out of it, through my grandchildren, which has, first, embarrassed me, secondly, forced me to think about the whole thing, and, thirdly, brought me to the point where there is no circumstance under which I would shoot a deer today unless I were forced to do so because my family was starving. Perhaps that has some bearing on what you are talking about.

Senator McGrand: Mr. Chairman, Senator McElman referred to something coming out of the school system. I do not think this has come out of the school system. It has come from something outside the school. I started my schooling in 1900. In our school books there were a lot of references to kindness, about doing good things. That disappeared about 40 years ago, when a different type of reading was introduced. I recall that about 1948, when I was active in New Brunswick politics, I spoke about this with the director of the curricula of the New Brunswick Department of Education. I asked him why the school books omitted emphasis on kindness, and so on. He replied that the references to kindness produced a very inferior type of man. He said that the new system was introduced to produce a more aggressive type of male, that that was the purpose of it. I think that is still going on. There may now be a turning around.

Senator McGrand: I would like to get your opinion on the humane aspect. Our schools will not develop unless some central body, such as a parliamentary body, goes out and does the footwork, to prove that this sort of thing is worthwhile.

Professor McKay: My immediate response is that that is one of the things which the school system has very much been oriented towards. There tends to be a great change, I agree. My wife has worked in the school system now for five to seven years. There is some recognition that the school system could provide much more than simple content information; that there are other things to be learned, such as social relationships, inter-personal skills, how to get along with people, how to treat people. I would like to see a course, for example, on altruism behaviour. Why not? It is certainly part of our human existence. There are a number of strengths that we would like to build into people—how to help other people. That should receive the same kind of emphasis in early school training.

It appears there has been some notion on the part of educators, and others, that somehow this should occur in the home. There appears to be an assumption that an adult, by definition, is an adequate parent and knows how to transmit inter-personal skills or to train in social relationships. We know in retrospect that is clearly not true. The tendency has been to turn to the state for the training of children, as adequate parents. Unfortunately the state does not always come up with the best answers either.

One of the things it can lead to is training programs for parents on how to be parents and how to handle children. If the state is going to play a role with children, perhaps it is that kind of support one can provide parents in the educative process without attaching a stigma to it.

Senator Norrie: The reason I am interested in this project is because I believe that behind every crime there is a reason. I think we should try to find out just where the biggest danger point, if there is one, lies. I have been studying the Dutch reform system. They have got down to 21 in 100,000 in prison. I guess that is the lowest in the world. They have no maximum security prisons at all. They take their inmates out in groups. I do not think they even call them inmates; probably they call them gentlemen.

Senator McElman: And ladies.

Senator Norrie: There are no prisons for women in Holland; there are no women prisoners.

Dr. Langley: They apparently use capital punishment on them!

Senator Norrie: I did not say so. Whatever their system, they have proceeded with it for the last ten years. You probably know all about it anyway. I was very interested in it. Why cannot we accomplish the same experiment, which has not been conducted as successfully in any other country? They take these men out in small groups. This is where your field would be so applicable. They try to keep the taint of prison off these men so that when they come out they are not "jail birds" for the rest of their lives. It seems to me that in our prisons we create criminals; we make criminals, because the longer they stay the worse they get. I think our objective should be to erase this in our country, to remove the taint of "prisoner" and "jail birds" from these people. I grant you it will be a slow process. The Dutch system looked very good to me. Could you comment on that?

Professor McKay: I certainly could. I am speaking from my training as a psychologist; I am a criminologist by inclination. There is almost a belief in our correctional system that if you build an institution you are going to fill it; it tends to be a "law" almost that the institutions will fill to their capacity, that the more you build the more you fill. The correctional system and the criminal justice system, certainly in Canada, has been considered by most people to be very progressive, in the sense that, for example, Ontario is working very much towards community orientation, community-based institutions and so on.

I hope I am not raising any political hackles here, but we find it frustrating that we cannot predict a new piece of legislation from one day to the next, as to what will occur. When the legislation comes out, it does not do so on the basis of any systematic knowledge in our field, but tends to be based on considerations of the politics involved. Included in the package, I understand, is a recommendation for building more fortress prisons, which, even the United States, law enforcement agencies in Illinois, for example, are trying to abolish. We are going back to the fortress concept. Most penologists say that we have to get away from that concept, that they are just not effective, they do not work. The failure rate is tremendous; the failure rate is a constant. We just have not improved on what we can do with fortress prisons. If we are working towards building more fortress prisons, I pity the people in, for example, detention centres, which will be the weak link in the chain. I hate to think what will happen to them in terms of people facing 20 to 25 years. If you think they have problems with their maximum security units now, you have not seen anything yet.

Senator McElman: I understood the trend was just the opposite, that what we now know of as the fortress type prisons are to be eliminated; that the "Dorchesters" and "B.C. pers." of the world are not acceptable; that the purpose now is to build some maximum security prisons but to minimize the numbers there; that it is the intention to reduce the capacity of each one of that type of maximum security for dangerous criminals to something of the order of a maximum of 180 rather than getting up to the present 600 and 700; that the new type of institution will be very different from the "Dorchesters" and "B.C. pens," which everybody accepts are dreadful in concept and in physical aspect; that, indeed, there is a different approach to the training of guards and so on within those prisons, making available more staff in the psychology field, and so placing

these institutions geographically, that there will be a high level of community input into the rehabilitation process. Now, that is my understanding of the package, that the trend is definitely away from the fortress type of prisons that we now have.

Professor McKay: I may have been incorrectly quoting. My source was one of the local newspapers, which I believe used the term "mini-fortress". Perhaps I am using incorrect terminology.

Senator McElman: From long experience, I say to you that today not only should you not accept what is in the newspapers, but I am beginning to believe that the less we read in the newspapers and the more we go for factual information the better off we will be.

Senator Norrie: I took my information from the Dutch Embassy. They keep only their extreme, hardened criminals in prison for longer than two years. To me, that is simply outstanding. I do not know what they do with their hardened criminals. I suppose they keep working on them. I have not gone into that thoroughly. It seems to me that they are trying to eradicate their minimum security prisons. They have eradicated all their maximum security prisons and now they are trying to get rid of more and more of their minimum security prisons. Some of their criminologists have been told, "You have an easier country to govern, not so many criminals are created here as in other countries." They say that that is absolutely false, that their country was one of the worst in the world to handle, that they had bigger and harder problems to handle than other countries.

Dr. Langley: Let me pick up on that and focus this discussion to the response, if you will, on the political-social system of children in trouble with the law. You have quoted the Dutch experiment, which is in process right now, and we will have to await its outcome. The personal conviction I now have is substantiated pretty well by the facts I have been able to locate, and has led me to take the position that I now have in class, over a glass of beer, and in print advocating the total abolition of all training schools for children. The information in the social science literature and the criminology literature is undeniable. Youngsters in these storehouses—and I am being charitable when I call them "storehouses"; if I were speaking in private I would use a much more vulgar term . . .

Senator Norrie: Do you mean foster homes?

Dr. Langley: No, I mean training schools, these large institutions of congregate care, where there may be anywhere from 30 to 300 youngsters.

Senator Norrie: Orphanages?

Dr. Langley: No.

The Chairman: Are you talking about juvenile delinquents?

Dr. Langley: I am talking about training schools for youngsters who have broken the law.

Senator Norrie: At what age?

Dr. Langley: I am talking of reform schools, training schools. Depending on the part of the country you come, from the terminology may be different.

Senator Smith (Queens-Shelburne): Industrial schools.

Dr. Langley: Industrial schools of an earlier era, very much so. I am speaking of training schools where youngsters are removed from their homes, from the community, from the school, and stored in a large institution because of violating the law, for the purpose of rehabilitating them—that kind of institution. The evidence appears to be undeniable that under our care in these kinds of situations youngsters get worse, not better. They get worse on the dimension of the greater likelihood of subsequently violating the law. So my position now is that we should shut these things down. We should shut them down overnight, because what we now know is that youngsters are, in fact, being brutalized and criminalized within these institutions. But yet, you see, what has happened is that we have refused to bite the bullet. We refuse to take a stand which can be based on the fact that youngsters in these places are in fact becoming in many instances more dangerous.

I am then left, therefore, with the question: which set of interests is being served by maintaining these institutions? Clearly, they employ people, they employ adults, they provide a place to isolate youngsters who are anywhere from embarrassing to disruptive to allegedly or actually dangerous to community life as we now live it. But the thing that concerns me is that despite the availability of social sciences and criminologically-based information that these institutions constitute clear and present dangers to the best interests of youngsters and to our own interests of private security and well-being in our homes, we continue to utilize this form of community response to control of delinquency.

Senator Norrie: Is this not one area in which a committee such as ours could obtain information and almost publicize it, thus having a great influence?

Dr. Langley: This is one place where someone like me could work together with someone like you. The information is there. We could bring it together and we could use your public forum to take a stand, advocating the total abolition of training schools immediately because they are constituting clear and present dangers.

We have moved beyond the mere gathering of fact, number one. Number two, much of current criminology deals not one iota with criminal causation or delinquency causation. All we are talking about is the information related to the ineffectiveness of a delinquency control response (large institutions for delinquent youths) which has been available in this country for some seven decades. The time has now come to remove the myth that these institutions provide security, protection, well-being, rehabilitation or anything decent.

Then we move to the whole issue of costs. I am sure you know that to store a youngster in one of these institutions for a year costs in the neighbourhood of \$10,000. Just incredible! Look what we could do with \$10,000 if we had the political, moral, humanistic courage to keep these disruptive youngsters in our communities. I am intrigued with the suggestion also that they are always other people's disruptive youngsters. If we had the courage to keep them in our communities and develop a lifestyle, a social order that would tolerate the kinds of wild oats, property damaging, sometimes person-violating behaviour—which many of us in this room engaged in in our formative, growing-up years—it would be of tremendous benefit. I know for a fact that I committed acts which, had they been detected, were the equivalent of felonies. I could have been sent up to the hoosegow, and instead of having a Ph.D.

behind my name I could have had a number behind my name. But I was lucky.

I am suggesting that a greater tolerance, as one concrete example of community response to the illegal behaviour of children, could move us out of the 19th Century in the area of delinquency control and youth alienation.

Senator Norrie: In doing this work you could take children at an even younger age than those in the industrial schools. How do we know it does not start before that?

Dr. Langley: We do not know, but what we do know is that when we, the state, intervene in the lives of children and send them to a training school, there's odds on even that those youngsters will be recycled through the criminal justice system in a later year. The recidivism rate, the tendency to repeat an illegal act, is in the order of 50 per cent for youngsters coming out of the training schools in the United States, in terms of the studies I am familiar with, whereas with respect to youngsters coming out of the juvenile court it is less than 16 per cent who are likely to come back. So, taking 16 per cent at the front of the system and 50 per cent at the back end of the system, on the basis of those facts people say, "Heh, they are getting worse under our care. We are part of the problem, not part of the solution." I do not know how many of us can really come to grips with that, but, you see, it is not a causation question. It is a reaction question, a delinquency control reaction question. That is where it is at for me. That is why I think you all could be of tremendous help in terms of a public forum, in terms of public education, to say, "Look! We are part of the problem, not part of the solution right now."

The Chairman: I am not quite clear, Dr. Langley, on what you would have for an alternative. If you do away with the industrial schools and the training farms and all of these devices we have for dealing with juveniles, what is the alternative? What do we replace them with?

We have the problem of the teenage gangs creating terror at an early age. Society is unable to deal with them. The only thing we have been able to come up with so far are some of these farms and institutions. Surely, some of those farms have had a good rate of success? At least, they claim to have had. I cannot vouch for the accuracy of that, but it seems to me that, when we brought in this method of dealing with the problem, it was considered to be an enlightened approach to the problem of juvenile delinquency.

Dr. Langley: The history of juvenile justice has convinced me that yesterday's reform is today's brutality; yesterday's reform is today's outmoded response to the whole area of delinquency control.

Your question, Mr. Chairman—which I think is fair and which someone with either my opinion or my arrogance, or both, needs to respond to in terms of what is an alternative to warehousing away delinquent youths—deserves a response.

First of all, I disagree that we are unable to make an effective response to the illegal behaviour of disruptive children. I say we are unwilling. I read delinquency literature, I read the issues about gang delinquency, youth violence, the collective or group response of young thugs, if I may use that term. I really come away sometimes with the impression that these kids are running society. These kids have the upper hand, to put it in power terms. I think we have to realize that within the natural order there is apparently a real ability, a real set of resources for young

people to live under the authority wings, the authority resources of their parents, of their adults, of their elders. I think we find the ineptness which we show towards disruptive youth very convenient. It does not require that much effort to support a training school, to ship out of the community a youngster who is disruptive. On the other hand, it requires an alteration of my lifestyle to become involved with my church youth group, to become involved with the Boys' Club, to become involved with the PTA, to become involved with my children, to become involved with my children's friends and to become an effective adult role modeller. We are so stratified, so divided in this country by age groups that we may have removed the effective supervision, the effective role modelling, the effective authority resources from the daily lives of the children so that we are now being tyrannized by a youth sub-culture which believes in hedonism, in irresponsibility, in immediate self-gratification and in the exploitation of those around them. (There are positive dimensions also to the youth subculture.)

The alternative is to "not build" a brick-and-mortar facade to protect ourselves from our youngsters by placing them in side. But I think, senator, we are talking about a basic change in the relationships between adults and children, between adults and adolescents, because, as I believe Father Flannigan once said, "I never saw a bad boy," or something to that effect.

Senator McGrand: He said that there was no such thing as a bad boy.

Dr. Langley: That there was no such thing as a bad boy? Well, I have never seen a youngster who would not respond to attention, interest, warmth, direction and supervision from involved adults. I do not mean that in a punitive sense, but in a guiding sense, in a humane sense. The whole nature of delinquency control in this country is suppressive, regressive, punitive and damned ineffective, and, last of all but most of all, it is expensive.

Senator Norrie: You know, we can train our children but how are we going to change the parents?

Dr. Langley: The name of the game may be to stop thinking of this in terms of "either/or"—and here I am thinking, senator, in terms of my own thinking—"either parents or delinquent youths". Perhaps the name of the game is to put the two together. How do we make parent-child, adult-youth relationships more effective, more growth-oriented, more productive and more fulfilling? How do we make it more safe to walk our city streets? In other words, delinquency control may need to evolve to the point where we are thinking of effective intergenerational relationships. I don't know, but I think we are going to have to do some very, very hard rethinking of our whole delinquency problem. My research is taking me far, far, far away from some of the concerns that you have mentioned here in your testimony about crime causation and in a few years from now I may have to plead that it was the wrong trail, but at least it may provide an alternative, a consciousness-raising set of ideals.

Senator Norrie: And what about the battered child?

Dr. Langley: What about the battered child?

Senator Norrie: Well, it seems to me that a child, no matter how young, can remember being beaten around pretty badly. It remains a very vivid memory. I have seen

them—and I am not even a social worker—and I think that they must carry these impressions right through life. I have never followed through completely on any individual case, but I cannot believe that they would ever forget such experiences.

Dr. Langley: Perhaps I can relate to you an incident of which I heard this week. This goes back to the comments made about our training schools or "storehouses". Alfred Training School, not very far from here, has a youngster in it because of under-age drinking. We can presume that there are other reasons why he is there, but the legal reason given is under-age drinking. The youngster was put out to work in the community because of having surpassed the available educational resources in that training school. He was put to work in the community, in a factory. He was under 16. The second or third day that he was there he lost three fingers. That is a case of being "battered and abused" while under our care. That youngster suffers a permanent physical disfigurement. That concerns me. The whole issue of battered and abused children, frankly, I think, unless we are dealing with a specifically delinquency-related youngster has to be separated out from the specific concerns that this committee is now dealing with. Once you start talking about battered and abused youngsters, then you start talking about run-away youngsters, dependent neglected youngsters and then you start talking about a whole range of things that ultimately muddy the waters in terms of how we react to this type of youngster (delinquent) in terms of policy, programs, et cetera.

Senator McElman: At the present time, Mr. Chairman, and for several months now there has been a committee of the House of Commons doing a study on this question of the battered child. Therefore I think it is an area that we should not get into because anything we would hear would simply be a repetition of what they have heard over there. I have some of the testimony. They are hearing some highly professional witnesses, and it is to be hoped that they will make an invaluable contribution.

Senator Smith (Queens-Shelburne): Do you know of any good institutions for the care of young offenders who have been sent to an industrial school, or whatever the term might be, by a juvenile court judge? Are there any such good institutions? I am speaking now of institutions that will not fall into the kind of categories which you have described and which you said should be burned down and that we should not have any more of.

Professor McKay: I think what you will find, senator, is that, like the parliamentary system, there is much debate even in our profession with regard to this. Having worked in one of these 'warehouses' Dr. Langley mentioned for over five years, I think I am familiar with some of the problems within these institutions. First of all, let me point out, if you remember Diogenes, who was very much in search of the truthful man, I went on a search of these institutions for the evil man, and I never found one. The intentions of the people involved in the system are very honourable. There is no doubt about that. They suffer great deprivation to pursue their profession and are very concerned about the care of the children. The system itself, unfortunately, does not lend itself to effective delinquency control, only to the extent of removal of such people from the community. I am doing some work now, with one of our students, on tracing the history of our training schools in the Province of Ontario, and one of the things you will find is that many of our problems evolved out of the

inability of small urban communities to deal with their offenders. The rural communities appeared to be taking care of them within their own community. Then the municipalities began to get involved. Then if you trace what happened over 100 years you find that we eventually went up the stages of government; the provincial government got involved and the municipalities from which the problem children came took less responsibility both financially and personally. Then at some moment the federal government began getting involved with young offenders, and we are now at the stage where the whole state apparatus is involved with young offenders, and the onus is being shifted from secretariat to secretariat and from ministry to ministry. Nobody seems to know what to do with it. One suggestion put forward by a number of people has been to return to community responsibility. The municipality could very conveniently send the so-called problem children out of the municipality and no longer had to see them. So the tendency was to build training schools in remote areas where you would not have to see the children. The experience in Massachusetts, which abolished training schools, was quite unique in that one of the responses from the community where they wanted to provide alternative residences for the children was, "We don't want them in our community; they will contaminate our children!" Those of us who worked in training schools can tell you that any one time you can probably open the door to about 85 per cent of these children, if you can find accommodation or foster homes for them. I have talked on hundreds and hundreds of occasions to people, groups, community associations, church groups, and everybody is sympathetic to the problem. But then I turn and say, "Will one of you take those children?" And the answer is no. It is almost impossible to get people to accept these children, possibly because they are around the age of 14 to 16 and nobody wants them. The community has been terribly unresponsive.

Senator Norrie: They do not want their own, let alone somebody else's.

Dr. Langley: I found in my year of running a home for dependent youngsters, not youngsters who violated any law but youngsters who had inadequate parenting, and in my cynicism I came to view these youngsters as instances of a surplus population, victims of societies such as those in Canada and in the United States who are given to excesses, and we are apparently developing surplus populations of youngsters that are economically and otherwise irrelevant and will have nothing to do with them in terms of providing decent child care. In responding to the question as to whether I know of an institution or "warehouse" for youngsters that is good and effective, my answer is absolutely, categorically, unequivocally no. I would like to suggest, along a couple of lines of logic, why I find them inherently dangerous to the best interests, health and welfare of children. They put this health warning on the sides of cigarette packages, but I would like to put it on the side of every building of every training school across this wide and wonderful country; because if you take the simple elementary legal principle, "Equal before the law," and if you take the next principle of, "Would you place your youngsters in that training school for the summer?", most people to whom I have raised the second question say rather quickly, "No, I would not. That is not what they are for." In discussing this, you invariably find that the reason parents will not place their youngsters in those training schools is because they constitute a clear and present danger to their youngsters in the minds of the parents.

My next question is, what is it then, in our thinking that allows us to give that second-class kind of child care to youngsters who violate the law? I am sure that honourable senators know that there is a legal principle—the *parens patriae* doctrine—which indicates that the state is the ultimate guardian of all children. That principle, in terms of its quality control nature, suggests that the state must give care roughly equivalent to that which would be provided by the natural parent. But when the parents have faulted on their legal obligation, the state must pick up on it.

The reason why I cannot justify training schools for any youngster is that I would not put my own there, and I do not know of many people who voluntarily would. I see it as an absolute violation of the basic constitutional principle of equal protection under the law for the youths subjected to them.

So, no. I then go ahead and cite research on recidivism, indicating that youngsters get worse under our care. I then have logic in law and research to back me up. That is why my stand is unequivocal and uncompromising. No; close them down.

Senator Smith (Queens-Shelburne): I must have an early opportunity to visit one. There is one not too far from where I live. There was the decision, after the war, to take the Nova Scotia Industrial School, as it was then called, out of the city of Halifax. It was located on one of the main streets, back off the street. I suppose it was hidden because there was a long path up to it. That school had a bad reputation for turning out criminals. I recall there was quite a lot of discussion about it. The decision was made to move it to a small town. It was a matter of convenience and it was done for economic reasons. They took over former facilities and property owned by the Department of National Defence. It was naval property. They had a temporary arrangement, but they have since built a new institution. They call it the Shelburne School for Boys. They may be sentenced by a judge handling juvenile cases in a private hearing, where no member of the public can hear them described as criminals. The reports I have indicate that apparently it is fairly well staffed and that there is an important community development in the town where the school is located. It is on the outskirts of the town. The hospital is located in the area and there are other facilities which have moved to that formerly publicly-owned property.

The boys in the school compete at basketball and hockey with boys from other schools in the area. Looking back, I cannot help feeling that that is a better atmosphere than for a parent who can afford it to send his rambunctious boy, who could not make out at high school and was caught a couple of times shoplifting, to a private school. Because of the change in atmosphere and the chance to participate in better athletics, the kind of program the boy likes, they almost all turn out all right. I am hoping that the kind of student they have at this particular school will eventually turn out to be all right.

Perhaps I am over-exaggerating the point. I must talk to those who can tell me what the percentages are.

Senator Norrie knows the small university I went to at one time. It had a ladies' college associated with it on the campus. I know of another small university on the campus of which there was another ladies' college. It was called a seminary, for some strange reason. At both of those institutions no young lady was permitted even to speak to a boy

on the street; she was not even allowed to go down the street without a teacher.

Senator Norrie: That is the reason we landed in the Senate.

Senator Smith (Queens-Shelburne): That is the reason I went to Dalhousie. I have spoken to people of my own age group who were in those institutions, and they look back at those places with anything but pleasure, because they regard them as a sort of prison. They were punished for the slightest step out of line. That was a worse atmosphere than the old industrial school in Halifax, but the girls did not turn out to be streetwalkers.

Professor McKay: There is a point, in the sense that both those institutions represented alternatives to the family. If you had an option between the three, would you prefer the family environment as opposed to one or other of those institutions, the one for the more wealthy and the one for the poor?

Senator Smith (Queens-Shelburne): If you were a tough parent you might like to throw the book at them. They would not want their son to be labeled "criminal". If they can get them into a hockey or basketball program, at one of those schools where they wear the kilt, and the boy feels proud of his good knees and the girls like him, he is a happy boy and he does not get into trouble. I am hoping that the boys in the small town have a chance to become part of that community when their six months or year is up.

Senator Norrie: I would like to bring out one small point. Do the delinquents come from rich areas or poor areas? Do we have more from the poverty areas than the rich areas? I have read articles that indicate that we create more delinquents from the rich areas than from the poverty areas.

Dr. Langley: What do you mean by "delinquent"?

Senator Norrie: Troublesome individuals.

Dr. Langley: Perhaps you could be more specific. What do you mean by "troublesome individuals"?

Senator Norrie: I do not know.

Dr. Langley: Yes, you do. Excuse me, I do not wish to be impolite, but you have in mind a conception, a class of individual. I want to bring that out, if you will allow me.

Senator Norrie: I mean the ones that are daring. They do not mind trying drugs, or pilfering here and there. They do not mind joining a gang around the town or of being vandals.

Dr. Langley: Are you talking about youngsters in the public school system, or what?

Senator Norrie: The articles that I read seem to indicate that it is due to boredom or rich parentage that we are creating young children who are looking for excitement—for something, but they did not know what. I have heard that contradicted, the theory that it came more from poverty than riches, or more from riches than poverty. Which do you think?

Dr. Langley: You know, again that is a causation question. Before I tell you what I think, let me be sure that I tell you what we don't know. What we don't know is the

relationship of the economic system of the social class position to illegal behaviour.

Having said that, let me suggest to you two classes of delinquency: "Delinquency", or "delinquent", as you well know, is like a rubber yardstick; it is different strokes for different folks in terms of what it really means. Are you talking about youngsters in a public school classroom who have responded to delinquency self report? I expect you are familiar with the phrase, "delinquency self reports". Youngsters are given questionnaires, which they fill out anonymously, indicating what kinds of illegal behaviour they have committed. We are talking also about delinquent youngsters who have been taken into custody or arrested by the police. We may be talking about youngsters who have appeared before the juvenile court, who we say are delinquent. We may be talking about delinquent youngsters who have appeared before a juvenile court and been adjudicated delinquent: We may be talking about youngsters who are adjudicated delinquent and put on probation, or put in a training school, or adjudicated delinquent and have had nothing done to them. I am just identifying six or seven different classifications or categories of what the term "delinquent" means. It is a rubber yardstick; it means anything.

Having said that, let me just take two classes of youngsters—those who report anonymously the kinds of behaviour they engage in, which is illegal but for which allegedly they did not actually get caught, and the youngsters who are in training school. What the research appears to indicate is that there is a phenomenal social class bias, such that youngsters who report anonymously their illegal behaviours—if you do not understand what I am saying, tell me and I will repeat it—these behaviours are distributed rather evenly throughout the social class structure, all the way from the lower class to the working class, middle class and upper middle class. The social class cannot predictably tell us which youngsters are engaging in illegal behaviours if they are undetected by the juvenile justice system. To a large degree, all these classes engage in behaviours that are fairly serious in terms of their law violation nature.

When we come to training schools, we find a disproportionate number of lower class children there, creating the myth that in fact delinquent behaviour is closely correlated and associated—which in our minds becomes causative but it is not, it is just associated—with delinquent behaviour, so that we are left with the visible part of the iceberg only, those youngsters costing us the most money, viewed in our myth to be the most dangerous, as being from the lower class in a disproportionate number.

In fact, if we look at what youngsters in the study halls are telling us when they fill out these delinquency self reports it is, "Listen, we are all cutting capers. Some of our capers are pretty serious." When we start talking about delinquents, I think I am going to have to start putting an adjective in front of that noun, so that we get this garbage term "delinquent" specified, so that we see delinquency in the proper perspective. This goes back to my earlier theme, that official delinquency, only delinquent behaviour, is disproportionately located in the lower class. Official delinquency in its occurrence is actually contaminated or created by the social reaction—that is, the juvenile justice system disproportionately selecting youngsters from one class and labelling them as training school youngsters, labelling them in the judicial process and storing them in training schools, for example; thus hiding the hidden part

of the iceberg that illegal youth behaviour is actually widespread, leading me to say that we have not yet heard the terrible news.

The Chairman: The thesis you have just proposed, that delinquency is not confined to any one stratum of society, but that it permeates all strata, is contrary, is it not, to the findings of the investigation carried out in the United States under President Eisenhower? If I recall, their report specifically said that being born poor, from a poor family, being deprived of education and the necessities of life, of good food and good environment, being unemployed because of lack of skills produces a group in which one finds a greater proportion of criminals, delinquents, than in any other group. At the other extreme, as you get families who are more prosperous and better off, with a higher level of income, the proportion is smaller. If I am correct, that was the finding of that commission, which is quite contrary to what you have just said.

Dr. Langley: Yes, it is. If you are talking about the President's Commission on Law Enforcement and the Administration of Justice, under the late President Johnson in 1967, I can respond to that. I frankly admit to being unfamiliar with such a study done in the "fifties under the late President Eisenhower's administration. I had better duck commenting on that, because I am not familiar with the government commission you are talking about.

The Chairman: He set it up.

Dr. Langley: I now understand it was a study done in the 'sixties.

The Chairman: Yes.

Dr. Langley: What I think resolves itself into an apparent contradiction, instead of a real contradiction, is that if you look at the population of youth being talked about, what you will find—and I say that without even having the specifics of the report, but being willing to dig into it if you would like me to verify this—is that those comments of the Commission are directed towards youngsters who have been involved in the juvenile justice system where the societal reaction has already been initiated. However, the best available evidence is that, without the contamination of the reaction of the juvenile justice system to the behaviour that is illegal, just taking the illegal behaviour of youth alone, the delinquency self report questionnaires on delinquency involvement, this is what reflects no class bias.

But the evidence of every government commission, every study in this area that I know of, is unanimous in the viewpoint that there is a disproportionate number of youngsters in the juvenile justice system at all phases who live with poverty, unemployment, unstable family, doubtful or disruptive school careers, large families, the whole set of indicators that creates the term "social disorganization." I think the contradiction is dissolved when you specify the population of delinquent youngsters to which you refer.

The Chairman: You say that crime is prevalent in practically the same proportion in all strata of society.

Dr. Langley: No, I said delinquency. I am making the distinction.

The Chairman: Illegal behaviour.

Dr. Langley: Illegal behaviour.

The Chairman: That is what I want to get at. I can understand that illegal behaviour such as going through a red light is not confined to any one social stratum; you will find the same proportion of illegal behaviour of that sort in every stratum. But when you come to the violent type of illegal behaviour, mugging and the destruction of property, I cannot buy the idea that you find the same proportion of that in every stratum.

Professor McKay: Perhaps I might reply. When the honourable senator was describing his concept of "troublesome," I suspect that a number of people in this room were thinking, "Gee! I remember doing little things like that myself."

Senator Smith (Queens-Shelburne): No, never!

Dr. Langley: You must be from New Brunswick. The air is still pure out there.

Professor McKay: Have you never turned over an out-house, never played truant?

Senator McElman: Senator Smith is from the valleys of Nova Scotia. There is a big difference out there.

Professor McKay: As a youth in Toronto I came from a very poor family. We could have been classed as poverty stricken. Well, I engaged in most of the illegal behaviour mentioned here today at one time or another. The only difference between what happened to me and to many of my friends was that different kinds of decisions were made by individual police officers who picked us up. In my case they used discretionary power to prevent me from going through the criminal justice system. The same was true of the truant officers. I ended up as a Grade 10 dropout basically because I had to work to maintain myself. Today that would have resulted in my being placed in a training school, or at that time it could have put me in a training school, in which case I suspect there would have been quite a different end result in terms of where I am sitting now versus where I would have been sitting had I entered that criminal justice system. Again, it was a question of discretion on the part of the truant officer. She and I worked out a system, more or less. She knew I had to work and we worked out the system that she would arrive at my house at exactly the same time each day, and I would take off from work and go home and hop into bed. She would ask me, "Are you sick?", and I would say, "Yes," and then she would go. She used her discretion. But that is not the case today. In order to help juveniles today we put them into the criminal justice system. But that is not necessarily helpful. As Dr. Langley underlined dramatically, that is not necessarily the case. It often takes one down a completely different road.

So in response to what you were suggesting, Mr. Chairman, I think that over the years many of us were at one time or another engaged in similar kinds of behaviour.

The Chairman: But to the same extent?

Professor McKay: In many cases, yes, sir.

Senator McGrand: Up until the latter part of the 1930s and the beginning of the second world war nearly all women nursed their babies. Then in that period all of a sudden they stopped breast feeding. At that time a well-known psychologist suggested that the resultant lack of intimacy between mother and child would lead to problems later on. Has any research been done on the number of criminals who were not breast fed as compared to those

who were? Again, before the days of television a great many men who carried out holdups and burglaries would, when confronted by a policeman, give themselves up rather than shoot the police, even though they were armed. They would give up rather than shoot because there was a respect for life and the dignity of life. They would not take a life. But the average criminal today holding up a bank will shoot without hesitation. Has anyone done the amount of research needing to be done on those two things? I do not mean to put you on the spot so I am not asking for your personal opinions. I simply want to know if anyone has done the research.

Professor McKay: If I may try to respond to both of your questions, first I should say that work with respect to breast feeding, and I suspect related to other kinds of concerns, has been done. One psychologist who talked about this in the 1940s was Harry Stack Sullivan. Sullivan believed that to some extent the learning process took place as a result of contact with the mother, whether it be through breast feeding or otherwise. He believed that the child learns discriminative responses to the environment by that kind of close contact with the mother. In other words, one learns from the mother to recognize anxiety-provoking situations because of the cues given by the mother.

With respect to present research I cannot think of the name of the person off-hand, but in terms of the mother's preference for holding a child on the heart side versus the other side and in terms of the child's responding to the heartbeat, which may be what you were getting at, Senator McGrand, apparently there is in fact a correlation between that and later problems the child might have. In other words, there is a correlation between the problems and the mother's preference for holding the child. That kind of research has suggested that there appear to be differences in training discrimination at various states—conditions to be afraid of or where we should be anxious, states in which we should not be concerned about anxiety. There has even been some research going back to prenatal environment in terms of the mother's transmission of information through the heartbeat so that the child learns to recognize anxiety states or to recognize a rate of heartbeat.

With respect to your question about television violence, there have been a number of studies from the late Dr. Richard Walters, Chairman of the Department of Psychology at the University of Waterloo, a most distinguished scientist who did a number of studies on laboratory aggression and violence. Recent studies have been done by a group of persons by the name of Ernon, Houseman et al who have looked at the problem over a long period of time as a longitudinal study. The difficulty with most of this research is that it tends to be correlational. It is difficult to pick out in correlational research just what are the causal factors.

As I pointed out to someone this morning, correlational studies tend to be misleading. For example, you may find a correlation between the number of oranges dropped in Florida and the number of priests who leave seminaries in Boston, but one could hardly draw a causal relationship between the two.

Senator McGrand: So you cannot say that there is any proved or pretty well proved theory. Returning to the idea of the mother nursing the baby on the left side or right side, that goes along with Lenoski's conclusions with respect to people who batter their children, in which he

suggests that mothers who did not see, smell or hear their babies at the time of birth are more likely to batter them. Has anyone followed up on Lenoski's work?

Professor McKay: Only to the extent that people are beginning to become more interested in pre-natal environment and the effect on the fetus and the extent to which dietary deficiencies have had a real effect on, for example, black children as opposed to white children.

We do know that even looking at a simple response like that presents a real complex phenomenon. For example, the mother's lack of training or some physiological change in the acidity of her milk might have some effect. The way in which the mother carries or handles the child may also.

Senator McGrand: And her mental attitude at the time.

Professor McKay: Yes. What she has learned and knows about handling and care of the child; the environment around them; the stimulus bombardment of the environment around them; it is a complex factor. It is almost impossible in many cases to pull out the components which go into making up any one of those situations.

Dr. Langley: If I may respond briefly to your question, Senator McGrand, there are a couple of things we need to keep in mind. First, we need to keep in mind that given early childhood behaviours, socialization and experiences, the current level of the sociological and psychological sciences at this time is such that we can make no predictable statement about behaviour ten or twenty years later based on what happens in terms of early socialization experiences in children. That is to say that we cannot now, with the current level of knowledge, build social policies or criminal legislation or any other public guides to controlling behaviour or generating behaviour, based on what we now know about early childhood behaviour. Secondly, why I strongly recommend research in this whole area of early child correlates of delinquency and crime be totally demphasized, is because there is a basic scientific principle called Occam's Razor which says that of two competing explanations you should settle on the simpler of the two. That is to say, if you can find something that happens in early childhood related to criminality and delinquency and you can find something later that relates to criminality and delinquency, of those two explanations the event that occurs later is going to give you a simpler explanation and that is the one that should prevail.

Senator McElman: Mr. Chairman, there have been anomalies in our society deserving of some consideration. For example, the incidence of violent crime is absent from the Hutterite communities of western Canada. I think there is something to be learned here. That is a rural situation, but then we turn to urban Canada, where we find our Jewish communities, and up to a couple of decades ago there was a certain ghetto status about them—and probably there still is in some instances—but the incidence of crime, and here I am speaking of violent crime, in the Jewish community has been extremely low in comparison to the rate for the rest of the community. I have given this matter a great deal of consideration myself, and I know that one of the factors involved is that in both of these religious communities there is a very heavy responsibility on the mother in the character-building of the child, and it is regarded quite properly as being a very heavy responsibility. This same thing applied not too many years ago, and to a greater degree than than it does today, to the rural

French-Canadian community in Canada. There again the incidence of violent crime was very low, and again we have the mother-impact as a responsibility from church and indeed from the whole community, and her input into the development of the character and the morals of the children was extremely high, as was her responsibility. In my view, there is something that we can learn from this. Although our society has changed dramatically in the last 25 years, the Jewish community is still largely an urban community but is producing fewer problems of violent crime.

Senator McGrand: You also have the Quakers.

Senator McElman: I chose these two examples because one was strictly a rural community while the other, the Jewish Community, was largely an urban one. This relates very much to what we are talking about, the incidence of violent crime. But today, even within Canada in the rural situation, the incidence of violent crime is still comparatively low but in the urban situation it is very high and is growing each year.

The Chairman: But to supplement your question and before Dr. McKay answers, it is fair to say that crime is increasing in rural Canada as well, although it is still largely concentrated in urban areas.

Senator McElman: I am speaking now of violent crime.

The Chairman: So am I. For example, we have a summer home in Nova Scotia, and perhaps Senator Smith can bear out the point I am making. Compared to five years ago, the number of break-ins, the number of thefts that have place is much higher.

Senator McElman: But that is not violent crime.

The Chairman: But there is violence involved too; and it has increased tremendously in the last five or ten years.

Senator McGrand: But you are talking about two different things.

Senator McElman: You are talking about crime against property and crime against people, and really it is a case of apples and oranges.

The Chairman: But crime is increasing, and it is increasing even in my own province. We were practically crime-free 20 years ago.

Senator Smith (Queens-Shelburne): Are you sorry that Newfoundland joined us?

Senator McElman: That is because you are destroying the outposts!

The Chairman: But coming back to the example of the Jewish community, I think that what you have said is perfectly true, but I think it is also true of the Chinese community and others. I do not know whether the mother-theory that you advance applies to the Chinese community as it does to the Jewish community, but I think you can pick out certain segments of society where they have a very low incidence of crime even in urban areas.

Senator McElman: I was not taking these two to the exclusion of others. I simply wanted to take two examples, one from a rural community and the other from the urban context. I know there are other ethnic and religious communities which would fall into this framework as well.

Professor McKay: I would like to respond to this along the lines suggested in one of my initial statements. This is the kind of research that I prefer to have done, that is on the healthy and stronger aspects of society. What makes up or constitutes what we consider to be a reasonably healthy group? Let me give a word of warning and that is that crime statistics can be very misleading. It may well be that the rise in rural crime so far as it is documented may be a function of better reporting systems as well as the hiring of more police officers resulting in more contact. There are a number of factors that go into crime statistics which we have to be aware of in interpreting them. But I agree with your observations. In my years of working on classification in training schools in which all the children coming in from Ontario passed through my hands, I did not find one Chinese child. I think if my memory served me correctly, there were two Jewish children and I believe there was one Italian but no Mennonite. I became concerned about that aspect as well and I gave it a great deal of thought and I began to realize in talking to various members of these communities that it was not that the children were not involved in activities that were classified as being delinquent for other children, but when the child became identified as a problem child the resources of that community came to bear and there were in fact sanctions for the parents for not keeping the child at a level of performance regarded as adequate within the community. It became almost a social stigma to have a problem child, and the support of the family was enormous and the support of the extended family was enormous and even the support of the community at large in that particular ethnic group or community. I felt that that was one of the major factors in not having these children enter the criminal justice system. It was not necessarily that they were not involved in the same kind of delinquent activities as others, but they were not adjudged delinquent, and that makes a difference.

Senator Norrie: Do you have any statistics about the difficulty in handling children experienced by working mothers as compared to a complete family home when the mother is at home?

Professor McKay: I am afraid I don't. I wish I did.

Senator Norrie: It is too soon to obtain those figures?

Professor McKay: We should have some data.

Senator Norrie: Do you think at this stage it has some bearing on delinquency? Have you any opinion?

Professor McKay: I would be very surprised if it did. I would have to look.

Dr. Langley: If I might respond to that, Mr. Chairman. The latest thinking on the whole issue of working mothers and delinquent behaviour is that what we seem to be coming down to is that the amount of contact between a mother and child is not a critical dimension. The critical dimension is quality of contact. At this point in time we cannot substantiate our belief that working mothers are correlated with or cause delinquent behaviour. The evidence is just not there. This continues to be one of the basic beliefs we have, but the evidence I am familiar with does not support it.

Senator McElman: You are not prepared to say that the mother's place is in the home?

Dr. Langley: No. I am prepared to say at this point that if she is there it will probably be unrelated to what her youngster are doing as it relates to illegal behaviour.

Senator McElman: For a certain type of mother, it is on the deficit side if she is at home.

Dr. Langley: That is well phrased. That apparently is where our level of knowledge is at the moment.

The Chairman: Has any research been done into sadism, as to what are the characteristics that lead to sadism, and the teenage gang phenomenon? It usually starts out with a tough leader, possibly a sadist, who dominates a group in the neighbourhood. He may have some feeling of deficiency in his life or makeup and they are more or less led into gangs, being challenged or dared to do certain things. They are brought into this type of life step by step. Has any research been done as to the causes of that phenomenon and the different stages in which it progresses?

Professor McKay: My response to that is yes, an incredible amount of research has been done over the past 50 years or more. It would be impossible to give a simple answer as to the reason for the phenomenon. Generally I think you will find some agreement that it provides an alternative to the family; but again there are so many competing theories. I do not think we have any simple answer.

The Chairman: Is any work going ahead on this?

Professor McKay: Yes.

The Chairman: But there are no definite findings as yet?

Professor McKay: Perhaps we are asking the wrong questions. We are now developing the sophistication to ask the right questions.

The Chairman: In fact, we do not know what questions to ask?

Professor McKay: That is always the problem.

The Chairman: Dr. Langley, do you have any comment?

Senator McGrand: That is really what I was intending to ask. I wanted to talk about sadism and cruelty. We allow a person to go out into the world for a week or 10 days, and we do not know, when he is on parole, whether he will commit another murder. A lot of work has been done, I believe, at Penetanguishene, and they now feel that they are getting closer to where they can identify the fellow who is likely to commit a second crime.

Dr. Langley: I find the discussion very stimulating. First, I want to challenge the comment that we in Canada are getting closer to isolating the dangerous offenders, which is the point you are talking about. I would love to have a closer association with that institution. I can assure you, senator, the scientific identification and the political control of dangerous offenders now is not a science. I do not think it is even an art form. It may just be at the hobby stage. That is one thing we have to keep in mind. Secondly, we should keep in mind that we are talking about adults, not children. With regard to sadism, the whole issue of sadism as it relates to a child perpetrating homicide—which is one of the concerns—centres around the fact that part of the problem, from my point of view of this research, is that if you look at the juvenile justice statistics with respect to children who engage in homicidal behaviour—

more specifically who engage in murder—taken in the context of Canadian life, of the number of Canadian youths around, the incidents are so rare. For instance, the incident that occurred in Ottawa in October, the Poulin case. The incidents of childhood sadism in terms of the delinquency-related issue—I emphasize the words “delinquency-related issue”—are so rare that once we have identified the correlates of sadism—the personality correlates and whatever other kind of correlates—I wonder what they are going to tell us in terms of fashioning effective delinquency control policies and laws. Looked at in the total perspective of the delinquency iceberg, childhood sadism is highly visible, highly dramatic and is a highly infrequently occurring kind of incident. As we move into an era of scarce resources, we will have to establish our priorities and research very carefully, and for the collective good I would strongly encourage the devaluation of delinquency-related research around childhood sadism.

The other thing you asked about was group violence, the collective base of delinquency behaviour, youth gangs, and the whole trip. I am not prepared to comment on that right now. As Professor McKay has said, there has been a lot of research on the subject—more thinking than research, more analysis than research.

One of the things I am intrigued with is that looking at delinquency as a group phenomenon may tell us more about group collective life that it does about delinquent behaviour. I am worried about the information yield of looking at the collective nature of delinquency behaviour, because most delinquent behaviour occurs in groups, be it two, three, four, five or six or more. They do not occur in isolation. Once we know that, what do we know? I am not sure.

Senator McGrand: I do not disagree. I am not qualifying. The point is that all the major criminals have been sadists.

Dr. Langley: I would challenge that statement, but go ahead.

Senator McGrand: Certainly. In my opinion, all great criminals have been sadists. We could go back to Jesse Pomeroy, of the more recent Boston Strangler who murdered 13 women. Nearly all those people stand out. Jack the Ripper and such people stand out. They were all sadists. I suppose what you mean is that they are a small percentage of our population. Nevertheless, they are too numerous. How do they develop into sadists? That is the point.

Professor McKay: I would respond, not necessarily facetiously, by saying that if we decide what great criminals are, they are people who have been adjudged criminals in the process, such as Mr. Hoffa in the United States. There is a point underlying that. If we are talking about criminals as dangerous offenders . . .

Senator McGrand: I am thinking about criminals such as murderers, sadistic murderers and that sort of thing. I am not talking about people who cheat the income tax, although they have some big criminals there too.

Professor McKay: If we get into the area of dangerousness, we come up against a problem. Dr. Ciale of our department has conducted a number of studies on the prediction of dangerousness. Incidentally, he is also a member of the Parole Board. He is willing to acknowledge that in many cases our best predictor is no prediction at all; that if we looked at it statistically, if we did not make a

prediction we would be better off than in making a prediction, if that makes sense to you. Very frequently the variables going into the prediction are so complex that it is impossible to pull out any one or two specific variables. You suggested, I think, cruelty to animals, enuresis, and setting fires as a triad of predictors. Some people would feel that tattooing, for example, is one indication. Many who work in institutions suggest that people who get tattooed can be identified as people who will eventually end up in a life of crime. Those in the navy would perhaps disagree with that.

Senator McGrand: Being tattooed is something you do to yourself. If there is any danger, you are going to be on the receiving end. When you set fire to someone or torture young animals, you are handing out the punishment, you are not getting it. That is different altogether. You cannot compare that. That is apples and oranges.

Professor McKay: I agree that might be a risky predictor, and that kind of work is certainly worth pursuing.

Senator McGrand: There has not been enough work done. Blackman and Hellman did that in 1967, I believe.

Dr. Langley: Two sources of information may help you. I meant to look one up before I came here, but unfortunately I forgot to do so. In a very recent journal there is a study of childhood murderers. I believe it was done in England. I would be very happy to Xerox a copy and mail it to you or have it delivered to your doorstep.

Senator McElman: Could you provide a copy to every member of the committee?

The Chairman: If Dr. Langley sends me a copy I will have it distributed.

Dr. Langley: I will send a copy to the chairman, who can distribute it to the members of the committee.

Another source of data which I know to be around but have not had access to yet, is Justin Ciale, our colleague, who has done an absolutely comprehensive study on childhood murderers in Canada. The last time I talked to him about it it was, I believe, classified as not available to consumers like myself. I was particularly interested in pulling data on youths who murdered out from his pretty massive study of Canadian childhood murderers, simply because I thought it would provide no useful information, but I wanted to check it out. I have not been able to get access to the data yet. Maybe I will ask Justin to see if he could share some information about what he found in his study on Canadian childhood murderers. Apparently it is the most comprehensive thing yet done in Canada in the area of murderers. That might really help you zero in on the sadism variable.

Senator McGrand: The boy who did the shooting in Ottawa and the other boy at Brampton were both 18 at the time they committed those murders. These boys must have shown evidence of this sort of thing when they were six, seven, eight or ten, but it was not recognized until they reached the age of 18. That is the story of so many murderers; they are hanged at 30, but when you go back over their history you find they were abnormal children, but it was not recognized at the time.

Dr. Langley: Let us take those two fellows and see what is the best available evidence we have. Our batting average on the identification of D.O's, dangerous offenders, is no better than one out of three. Let us take the Brampton and

the Ottawa youngsters. Given our level of scientific knowledge with respect to the identification of dangerous offenders, what we would have to do—I am simplifying this, but I want to stay within existing knowledge—is identify three youngsters in Brampton who have characteristics that, when put together, add up to what we call dangerousity, the dangerous offenders. Then we find three youngsters such as the Poulin youngster in Ottawa, who have these characteristics that could make up what we are calling dangerous offenders. This youngster, given what we know now about him or have heard, has the predisposition in subsequent years to commit homicidal or sadistic acts. We know that in 1976 the youngsters are four or five years old. Which one of those six youngsters, or which two of those six youngsters, are you going to put under state supervision, state control, state treatment? On four of them you will be wrong.

Senator McGrand: You have not convinced me yet.

Dr. Langley: One of the things that intrigues me about criminology is, when facts and belief conflict, which goes out of the window first? The facts. I do not think I am going to convince anybody in this room of anything different from what they believe currently.

Senator McGrand: We are just not on the same wavelength.

Dr. Langley: I think we are.

Senator McGrand: If you take ten children, you cannot tell how they are going to turn out. There are people who show certain evidence at the age of five, six, seven or eight; they show more at six, more at eight, and even more at ten. There is some place along the way where you should be able to say, "That fellow is going up and up," or "That fellow is going down and down." Not enough research has been done there.

Dr. Langley: I agree we should be able to say it.

Senator McGrand: That is it.

Dr. Langley: But we cannot.

Senator McGrand: Not at the present time.

Dr. Langley: Not at the present time, unless we are willing to mis-classify every two youngsters for every one that we accurately classify. I suggest to you that for the moment we should stick with those six youngsters, and just to make it more appealing, let one of those six youngsters be yours.

Senator McGrand: Sure.

Dr. Langley: Then I think you begin to see the dynamite we are playing with in terms of the threat to the Canadian way of life with respect to individual freedom and protection from governmental intervention. The problem then becomes one, not of delinquency causation but one effective societal reaction. That is the serious problem, not delinquency causation. That is the bullet we have to begin biting on, and biting hard. Then dealing with the facts, we are not going to stand around living in fear and trepidation of marauding groups of youngsters, youngsters prowling our neighbourhood with guns, or sitting in trees taking pot shots at us. All of these are involved in the form of mythification about the threats of delinquency to our way of life. We have to come to grips with the fact that our fears exceed our knowledge for dealing right now with

delinquency problems. Maybe we ought to start dealing with our fears, because that may be the ultimate threat to a secure and peaceful way of life for Canada—along with the current ineffective societal reaction to delinquent behaviour.

Senator McElman: In the meantime, is there not an intermediate step? Sticking strictly to the type of discussion Senator McGrand raised, is there not an intermediate step—and perhaps this is not with the schools—where prior to a crime actually being committed there will be qualified persons in the schools who can recognize these symptoms before they actually flare into some act of violence or crime against property?

Dr. Langley: The best study on the prediction of delinquency that I am familiar with in English North America was done in the Boston area by Glucks, a psychiatrist, and lawyer I believe, a husband and wife team. You are familiar with it?

Senator McElman: Yes.

Dr. Langley: There was also the Cambridge Somerville study, 1949, which was also an effort under fairly controlled conditions—and you always have problems with controlled conditions—to predict subsequent delinquent behaviour. Both of these studies have overpredicted, based on childhood correlates and childhood characteristics. Both have overpredicted subsequent criminal behaviour. They are predicting, but they are overpredicting.

I do not know for sure that expertise educators have that parents do not have for identifying dangerousness in young people. In our criminology program, which is a graduate level program, we are not able to teach, much less learn, these skills.

There are people who have a feel for other people's dangerousness, but I do not think we want to base policy and law on a "feel" for something. So that intermediate position is appealing because it is compromising and it is appealing because it seems feasible, but I do not think we should confuse effectiveness with feasibility.

Senator McElman: I do not agree with you entirely. I think it is appealing because it enters the field which I sense Senator McGrand wishes to move into, and that is the field of preventive criminology. In Canada, as in most other western nations, we spend immense amounts of money in reaction, and only in reaction, to crime, as we describe crime today. Many of the things we describe as crime today really are not crimes against society, but that is another very involved subject.

Dr. McGrand has had a lifetime of experience and knowledge in the field of preventive medicine. Over the very many years, hundreds of years, which society has devoted to medicine, we have devoted a disproportionate amount of our worldly wealth in reaction to disease and illness, but, finally, enlightened people such as Senator McGrand began to realize that savings in human lives and in the wealth of any society lie not in reacting to illness but in finding the causes of illness and in having mass immunization and so on.

I sense that this is the same sort of thing Senator McGrand and others would like to see Canada, as a leader in this field, starting to devote itself to in both physical and financial resources: preventive criminology as opposed to corrective criminology, which has been so unsuccessful.

We are struggling in Parliament now with a new approach. Many of us appreciate that it is perhaps a step forward but that it is only another palliative when compared with what should be done in terms of preventive criminology, in terms of finding the causes.

I have found, as you have apparently found, Dr. Langley, this whole discussion quite stimulating, but I should hope we can return to what Senator McGrand said in initiating this whole discussion, and that is, what usefully can this committee and Parliament do in stimulating within Canada, be it financially or otherwise, some really useful work in preventive criminology, and perhaps with most particular attention to the causes, the causation at the infancy level and those levels which Dr. Penfield studied so closely over the years in his immense activity, when the mind, as I think he used to say, is like a blotter?

Professor McKay: I am in complete agreement with you, Senator McElman. I believe I suggested in my opening remarks that I feel the educative process is probably one of the most important areas. I do not necessarily agree that we are in a total state of ignorance as to symptoms or possible areas of identification of problems.

Where Dr. Langley and I tend to disagree is on what possible effects intervention at that stage might have in the long run. It is clear that there are so-called behavioural problems which can be identified at a reasonably early stage. What we tend to agree on is what constitutes a behavioural problem. I think Dr. Langley's major concern is the range we would wish to incorporate in that, in terms of getting people into the school system at a young age or in terms of at least identifying some possible problems on which we can bring resources of the country to bear.

But I am certainly in agreement with you, senator, in respect of getting the community involved with the child rather than pushing the child off into a system which inevitably ends up in a criminal justice system. I agree with you that the corrective measures have not worked successfully. I should like to see us going to the preventive stage. It is risky for us in terms of suggesting research funds for preventive measures, however. We simply do not get them. When we want to study the health aspects as opposed to the pathology aspects we run a risk, but that is a risk we take as a matter of course.

The orientation must, of course, change. Studies of the various family groups, for example, do not appear to be producing the same adjudged delinquency rates. Perhaps the king of things we should better understand is what is going on in early life, and there are some areas in which I find myself in complete agreement with you.

The Chairman: Do you have anything to add to that, Dr. Langley?

Dr. Langley: No, sir.

The Chairman: Honourable senators, before we close I should like to thank Dr. Langley and Professor McKay for coming here this morning. As I stated at the outset, our committee is charged with the responsibility of looking into and reporting upon the feasibility of the Senate committee's inquiring into and reporting upon crime and violence in contemporary Canadian society. I think we are all agreed that it is "feasibility" as distinct from "desirability." The committee examined the question and came to the conclusion that there would not be much point in duplicating investigations which had already been carried out in the United States and other places. We then came to the

decision that we should investigate whether there were any areas of concern for us, such as early recognition of symptoms, diagnosis or early preventive steps which might be taken, which would warrant such an inquiry. Now, if I have gauged what you said correctly, you do not think there is a sufficient body of knowledge available at the present time that would warrant that type of inquiry. However, I should like to get your reaction to that before we go.

Senator McGrand: Mr. Chairman, I do not think you put that question right.

The Chairman: I am asking their opinion.

Senator McGrand: But you are going to put them on the spot in asking them what we should or should not do.

The Chairman: Well, that really is our decision. But the point I wanted to establish was whether, in their opinion, there is a sufficient body of knowledge available at the present time to make such an inquiry feasible.

Dr. Langley: I will state it in terms of research policy priorities. My position before this group of people this morning has been that I would not recommend it as a top priority research item. For me, the top research priority item should be that of reaction, not causation. That is my position.

Senator McGrand: Mr. Chairman, you pinned them down to this, you have asked them to give an opinion whether we should go on with research into early signs of delinquency, but that is only part of the problem, and that is not the whole story by any means. The whole story is this, should this Senate committee make any attempt to add to our present knowledge, or lack of knowledge, of these things that are going on? I understood you, when we came in here first, to say that there was some sort of field we could occupy.

The Chairman: Yes, and if they have suggestions to make in that respect, they would be very acceptable.

Professor McKay: I certainly made my suggestions at the beginning as to where I thought energies could best be directed. In terms of literature on causation I can provide references for you. There is a book I brought along, for Senator McGrand in particular, involving a 30-year study, and the kids identified certainly had problems. There is an incredible body of knowledge, but how to make sense out of it in terms of policy formulation in working towards a preventive aspect or working towards information transmission in the preventive aspect, I would certainly agree and I would highly recommend working in that field very strongly.

The Chairman: You think a Senate inquiry into that field would be worthwhile?

Professor McKay: In terms of illuminating and educating the difficulties in the area, I think most definitely that

it would be, but I am in a terrible position, as Senator McGrand pointed out, in that I am not sure where you are going to go. We have made some recommendations here today—contrasting recommendations in many cases—but I think the decision obviously is yours.

Dr. Langley: I would add another appendage to that on the causation versus reaction emphasis, and my concern is that education does not begin with the public, but it begins with us in this room, and I would strongly recommend some kind of more permanent liaison between the Hill and the universities. I find this kind of educational forum incredibly constraining. The young people talk about a rap session, and once I decided I had something to offer this subcommittee, I was absolutely thrilled to have the opportunity to get near people who are themselves or who are near policy makers and the people who control fiscal allocations. I myself have some expertise, but I have no political power. You people have political power, but I do not know how much expertise you have because of the forum we are in. But I think that if we got together the addition of our resources would produce a geometric outcome with respect to fashioning an approach by this subcommittee, for example, towards a study of crime causation, crime reaction, but I think the education needs to start with us, both ways. What kind of resources are available? If I want to submit a research proposal, how would I do it, where would I do it, who would I do it to, and what kind of sponsorship would I get? Secondly, would you not want to learn a bit about my proposal before you sponsored it, for example? I would be glad to give my time freely—I believe deeply in voluntarism. I do not think it should be done in prisons, and to me this is not a prison. It could be done within these walls, and you all have a lot to teach me. So that is the forum of education I would like to see. I see this as an intermediate between causation and reaction research, and if you don't drink beer, which I do, if you drink coffee, great, start talking over coffee. Come out to my class; come out to Professor McKay's class; just come out and meet some people who are criminology students and who will be the criminologists of the future. Let them know where Parliament stands on some of these issues, and see the kind of Canadians, the exciting Canadians, we are attracting into this field, a field that may be drying up its very resources at precisely the time in this century when we need them. So, for me, education can and should be right in this room. There ought to have been a lot more people here than are here. So, I guess, that would be my approach.

The Chairman: On behalf of the committee, I want to thank you very much for taking time out to come here and give us your views, your experience and your research, all of which have been very, very helpful to us.

The committee adjourned.



FIRST SESSION—THIRTIETH PARLIAMENT
1974-76

THE SENATE OF CANADA
PROCEEDINGS OF THE
STANDING SENATE COMMITTEE ON
**HEALTH, WELFARE
AND SCIENCE**

The Honourable C. W. CARTER, *Chairman*

Issue No. 14

THURSDAY, MARCH 11, 1976

Complete Proceedings on Bill S-31 intituled:
"An Act to amend the Quarantine Act".

REPORT OF THE COMMITTEE

(Witnesses—See Minutes of Proceedings)

THE STANDING SENATE COMMITTEE ON
HEALTH, WELFARE AND SCIENCE

The Honourable C. W. Carter, *Chairman*.

The Honourable M. Lamontagne, P.C.,

Deputy Chairman.

AND

The Honourable Senators:

Argue, H.	Goldenberg, H. C.
Blois, F. M.	Inman, F. E.
Bonnell, M. L.	Langlois, L.
Bourget, M.	Macdonald, J. M.
Cameron, D.	McGrand, F. A.
Croll, D. A.	Neiman, J.
Denis, A.	Norrie, M. F.
*Flynn, J.	*Perrault, R. J.
Fournier, S.	Phillips, O. H.
(<i>de Lanaudière</i>)	Smith, D.
	Sullivan, J. A.—(20)

**Ex officio* member

(Quorum 5)

Order of Reference

Extract from the Minutes of Proceedings of the Senate of
Wednesday, 25th of February 1976:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator McGrand, seconded by the Honourable Senator Basha, for the second reading of the Bill S-31, intituled: "An Act to amend the Quarantine Act".

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator McGrand moved, seconded by the Honourable Senator Basha, that the Bill be referred to the Standing Senate Committee on Health, Welfare and Science.

The question being put on the motion, it was—
Resolved in the affirmative."

Robert Fortier,
Clerk of the Senate.

Minutes of Proceedings

Thursday, March 11, 1976
(18)

Pursuant to adjournment and notice, the Standing Senate Committee on Health, Welfare and Science met this day at 10:05 a.m., the Chairman, the Honourable Senator Carter presiding.

Present: The Honourable Senators Bonnell, Bourget, Carter, Denis, Fournier (*de Lanaudière*), McGrand and Smith. (7)

The Committee proceeded to the consideration of Bill S-31 "An Act to amend the Quarantine Act".

The following persons were heard in explanation of the Bill:

Mr. Bob Kaplan, M.P.,
Parliamentary Secretary to the
Minister of National Health and Welfare;

and from *The Department of National Health and Welfare:*

Dr. Lyall Black, Director General,
Programs Management,
Medical Services Branch;

Dr. R. A. Sprenger,
Senior Consultant,
Quarantine and Regulatory,
Medical Services Branch.

Mr. Kaplan made an introductory statement. The witnesses answered questions put to them by Members of the Committee.

After discussion and on motion of the Honourable Senator Bonnell, it was *RESOLVED* to report the Bill without amendment.

At 10:40 a.m. the Committee adjourned to the call of the Chair.

ATTEST:

Patrick J. Savoie,
Clerk of the Committee.

Report of the Committee

Thursday, March 11, 1976

The Standing Senate Committee on Health, Welfare and Science to which was referred Bill S-31, intituled: "An Act to amend the Quarantine Act", has in obedience to the order of reference of Wednesday, February 25, 1976, examined the said Bill and now reports the same without amendment.

Respectfully submitted,

C. W. Carter,
Chairman.

The Standing Senate Committee on Health, Welfare and Science

Evidence

Ottawa, Thursday, March 11, 1976.

The Standing Senate Committee on Health, Welfare and Science, to which was referred Bill S-31, to amend the Quarantine Act, met this day at 10.05 a.m. to give consideration to the bill.

Senator Chesley W. Carter (*Chairman*) in the Chair.

The Chairman: Honourable senators, we have before us this morning Bill S-31, an act to amend the Quarantine Act, which was referred to us by the Senate. We have as our witness, Mr. Bod Kaplan, M.P., Parliamentary Secretary to the Minister of National Health and Welfare, and Mr. Kaplan has some of his officials with him. I will ask Mr. Kaplan if he wishes to make a preliminary statement, and if he would introduce his officials.

Mr. Bob Kaplan, M.P., Parliamentary Secretary to the Minister of National Health and Welfare: Mr. Chairman and honourable senators, I would like to make an introductory statement, if I may, but before doing so I would like to introduce the officials of the department who are with me this morning. Dr. Black is on my immediate right; on his right is Mr. Mullane; and at the end we have Dr. Sprenger.

I expect that honourable senators already understand the basic purpose of Bill S-31, from the introduction given by Senator McGrand. The bill adds provisions to the Quarantine Act, to deal with communicable diseases which are a grave danger to public health but which are not presently specified in the law. The concern is that a traveller who has, or is suspected of having, a dangerous communicable disease, may spread it to others unless he is promptly detained.

To ensure fairness to all, the additional authorities sought is subject to approval by the Minister of National Health and Welfare, who, in turn, has to show cause to a superior court judge within 48 hours as to why a person is being detained.

The need for Bill S-31 is a reflection of the rapidly changing times we live in. We hear almost daily of new advances in medicine, but at the same time we hear of more and more new concerns for which there is not yet adequate personal protection or treatment. Some recent concerns involve our environment, such as pollution of water and air by all kinds of wastes. Other concerns arise from the possibility that recently discovered dangerous communicable diseases could be spread from other continents to Canada. Indeed, some dangerous communicable diseases were not even identified in the medical literature as recently as six years ago. Today, travel by air makes it possible for diseases to be spread very quickly to far distant shores once an outbreak occurs.

In the past, all countries have been especially concerned with diseases such as smallpox, cholera yellow fever and the plague, which are well known to result in epidemics,

unless outbreaks are immediately ringed off. Accordingly, international sanctions have been drawn up by the World Health Organization, and acts and regulations on quarantine control have been passed to further protect national interests and public health.

Under the International Health Regulations proclaimed by the World Health Organization, signatories must limit quarantine control and detention at ports of entry to the four major quarantinable diseases I just mentioned. The existing Canadian Quarantine Act observes this limitation. Canada applied two years ago, however, to have the World Health Organization add a dangerous communicable disease, namely, Lassa fever, to the listing of notifiable major quarantinable diseases. The application was rejected on the grounds that not enough was known at that time about the disease, and that it was doubtful that including Lassa fever in the International Health Regulations would be effective in controlling the spread of the disease. While Canada accepts that no regulatory sanctions can be expected to guarantee that the disease will be kept where it is presently confined, in West Africa, it is nevertheless important that Canada take the measures necessary to protect our own national interests. The Canadian public has a right to expect an effective enforcement of quarantine control.

Urgent action is vital in cases of newly identified contagious diseases, in order to minimize the risks of importing the disease into Canada. A deficiency in the present Quarantine Act prevents urgent isolation of an international traveller arriving in Canada who is believed capable of spreading disease of serious consequence to the public health, if such disease be other than smallpox, cholera, plague or yellow fever. In other words, the quarantine officers at our ports of entry do not have the authority to deal quickly with any other dangerous communicable diseases for which detention in isolation is the only practicable solution.

The types of diseases alluded to as "dangerous diseases"—a grave danger to public health in Canada—are those which are recognized as highly communicable, and which could potentially cause an epidemic. They are also diseases for which specific treatment is lacking, which carry a high mortality, and for which there is no known immunization protection. The term "dangerous diseases" in this context also implies that quarantine action would be useful. It is not intended that such highly communicable diseases as epidemic influenza, for example, be included, because no regulatory measures are possible that could effectively stop entry of the disease.

The Canadian Quarantine Act was amended in January, 1972. It is remarkable that in such a short space of time, that further amendments are now urgently needed to include provisions for quarantine control of a number of so-named "dangerous diseases," which are not presently listed in the schedule of the act; but as I said, Mr. Chair-

man, this is a reflection of the rapidly changing times we live in.

I have introduced the officials who are with me, and we are prepared together to attempt to answer any of your questions. Thank you, Mr. Chairman.

The Chairman: Thank you, Mr. Kaplan.

Honourable senators, do you wish to proceed generally on the bill, or would you like to go through it clause by clause?

Senator Bourget: There is one question that I would like to ask, Mr. Chairman. How will this work vis-à-vis the international health regulations? Have the international health people been advised, or do you have to advise them, or what?

Mr. Kaplan: The World Health Organization, of which we are a member, is kept informed of all activities, including this activity, and there are precedents for our move. The United States and the United Kingdom have already taken measures to provide for dangerous diseases not included in the quarantine schedule, so we are confident that ours will not be objected to.

Senator Bourget: There will not be any breach of protocol, or whatever you call it?

Mr. Kaplan: No. The precedents that are available indicate that this will just be accepted by the World Health Organization.

Senator Bonnell: What makes it so urgent this year? Is it the Olympic Games? How is it that this became all of a sudden so urgent?

Mr. Kaplan: Two events of international importance are being held in Canada: the Habitat Conference, which will bring three or four thousand people from all over the world, is one; and, as you noted, the Olympic Games is the other. So it seems appropriate, in the light of our present state of knowledge, to act now so as to be prepared for events that might arise this year.

Senator Bonnell: So these are the two reasons making it so urgent. It is not that there is a lot of Lassa fever, or some other contagious disease at our doorstep; it is a matter of the Olympic Games, and people coming from all over the world?

Mr. Kaplan: Yes. This is something that is anticipated in the future, but it is not a present crisis, or a present danger.

Senator Bonnell: I notice in clause 1 of the bill, in proposed section 7(1), you would now add "or any other disease". If a disease is not contagious, what are you worrying about it for? If somebody has a non-contagious disease like cancer or diabetes you would not put him in isolation for three days, or hold him in detention, or send him back to where he came from, would you?

Mr. Kaplan: No.

Senator Bonnell: Then why do you put those words in there?

Mr. Kaplan: The words are underlined because they are new words.

Senator Bonnell: But why do you need them?

Mr. Kaplan: The expression, "infectious or contagious diseases" sounds pretty general, but actually, if you look in the definition section of the present statute, that is limited to only four diseases that are listed in the schedule.

Senator Bonnell: Why not change the definition, then?

Mr. Kaplan: If we did that, we would be directly violating our undertaking under the international agreement that we signed with the World Health Organization, because in that agreement we undertook that no diseases would be routinely treated as scheduled diseases other than the four internationally agreed upon. So what we are doing is introducing a parallel stream of legislative control over other diseases.

You will notice that the full expression is actually:

"or any other disease, the introduction of which into Canada would, in the opinion of the quarantine officer, constitute a grave danger to public health in Canada."

Cancer would not constitute a grave danger to public health because, as you noted, it is not an epidemic type of disease; so far as we know, it is not communicable.

Senator Bonnell: I cannot understand why this expression is there. You already have infectious diseases and contagious diseases included.

Mr. Kaplan: "Infectious or contagious" only means the four scheduled diseases that I referred to, so we need extra language to cope with others.

Senator Bonnell: And that is in the act itself?

Mr. Kaplan: It is in the schedules of the act, but the answer to the question, of course, is yes.

Senator Bonnell: And you cannot change the schedule of the act, rather than including that awfully broad term, "any other diseases," which seems to give an awful lot of power? Take diabetes, for example. Does it mean that no more diabetics will be allowed into Canada?

Mr. Kaplan: It is not "any other disease—period." It is, "any other disease—comma—which ... would, ... constitute a grave danger to public health".

Senator Bonnell: I cannot, for the life of me, understand why you want the "any other disease" in there. That gives an awful lot of power. Any disease in the world can now be thrown in under this clause.

Mr. Kaplan: Any disease, provided that in the opinion of the quarantine officer, and subject to the safeguards prescribed, it constitutes a grave danger to public health in Canada.

Senator Bonnell: Well, you say influenza is not one, but more people die of influenza today—and this has been the case in Great Britain and the United States—than of any other disease. In fact, more people have died there of influenza than died in the Vietnam war.

Mr. Kaplan: But the opinion of our medical advisors is that quarantine is not an effective method to control this.

Senator Bonnell: But you don't go to your medical advisor; you go to that man who is not too well trained out there at the gate at the airport.

Senator Bourget: But surely they must have a doctor there too?

Senator Bonnell: Do you have a quarantine officer at every port of entry?

Mr. Kaplan: There are 17 quarantine stations in Canada, and provision is made for a quarantine officer to be available on call at all ports of entry. If a customs official has any ground for suspicion, then his responsibility is to call a quarantine officer, and the quarantine officers are backed up by a staff which includes medical doctors; but not all quarantine officers are medical doctors.

Senator Bourget: But I think there is a doctor located at every station, because how could somebody judge if he is not a doctor?

Mr. Kaplan: Even more than that, after the doctor or the quarantine officer has made his determination, he needs the minister's approval, and this is an additional safeguard, and that approval has to be confirmed within 48 hours by a judge; the judge has the power to refuse the order or to amend it or to confirm it.

Senator Bonnell: Meanwhile the individual is many miles from Ottawa; he is stuck in Vancouver perhaps for 48 hours.

Mr. Kaplan: Senator, you have made the point very well. There is the question of the liberty of the traveller visiting our country, but on the other hand there is the interest in protecting the health of all Canadians.

Senator Bonnell: I agree with protecting the health of all Canadians, and I agree with measures taken in connection with those contagious diseases which we have listed, yellow fever, cholera, the plague, smallpox and the others; but "any other disease", that is a different matter.

Senator Bourget: It says "any other disease" but they are classified.

Senator Bonnell: But they are not specified. That is the problem.

Senator Bourget: But if they create a danger.

Senator Bonnell: But who makes that decision?

Senator Bourget: Well, I suppose the doctor does, and he has some knowledge.

Senator Bonnell: But the doctor is not going to be sitting there at Vancouver Airport waiting for somebody to come in who has some disease.

Mr. Kaplan: If a person is held because a disease is suspected, as I mentioned there are two levels of safeguard. One is that the minister has to authorize the detention, and then a judge has to approve it within 48 hours. If you go through the bill, you will see that the individual has to be informed of his rights and that he is entitled to have counsel present at the hearing. Everything is being done to conform to the Bill of Rights and to respect the civil liberties of the individual.

The Chairman: What factors would alert an officer at a port of entry that a person may have been in contact with a disease? I am not speaking of somebody who comes in and who is actually sick. If somebody comes in and he is actually sick, that is a different matter. But somebody may come in with no appearance of being sick but who is still a carrier.

Mr. Kaplan: Well, let me give part of the answer, and then I shall ask the officials to continue. One factor is the place he is coming from. We know that Lassa fever comes from West Africa and certain other diseases are endemic in other parts of the world, so there will be an awareness of that factor when a traveller arrives in our country. Secondly, there is material, through international medical information, by which we are informed about possible carriers and possible problems. As to medical symptoms, I would like the officials to have an opportunity to tell you the sort of things that quarantine officers look for.

Dr. Lyall Black, Director General, Programs Management, Medical Services Branch, Department of National Health and Welfare: Mr. Chairman, there are two separate points of view here. First of all, there is the traveller coming from a country, who is not ill but who may well have been exposed to a dangerous disease, and we provide our quarantine officers with updated bulletins which we have received from the World Health Organization and the communicable diseases centres, as well as from our own officers overseas, so we can alert the individual passenger to the fact that he may have been exposed to a dangerous disease. We advise him to check with his own doctor if he develops any symptoms.

We also have a procedure whereby we can place persons under surveillance. Again, they are not ill, but there is the risk that they may well have been exposed to a disease. Perhaps they have been to Ethiopia and have been in danger of contacting smallpox and they have not been vaccinated. This places a requirement upon them to report to their own medical officer of health. The quarantine officer will also advise that medical officer of health. It is only when the patient is actually ill that the quarantine officer would have to have a medical opinion, if he himself is not a doctor, and that would include a history of where the man has been, what illnesses he has had and what immunizations he has had, and at that time it would be a medical judgment as to whether or not a dangerous disease could have been contracted. In many cases it is not possible to decide this without making some specialized tests. I think a case in point that we run into once or twice every year is the possibility of smallpox. A person arrives on a ship or on a plane with a type of eruption similar to smallpox, and it is only by going out to the individual patient with some type of specialized equipment and making tests that we can make a diagnosis. So, in effect, the diagnosis is held in limbo until we make a definite diagnosis. In fact with a disease like Lassa fever it is very difficult to make a definite diagnosis in a short period of time. But we see this as being utilized very rarely. We are going to brief all our quarantine officers on these particular diseases and the concerns we have about them.

We also have a concern, of course, that newly diagnosed diseases might come in the next year or two, diseases of which we have no knowledge at the present time.

Senator McGrand: What is the incubation period for Lassa fever?

Mr. Kaplan: I think it is actually six to 13 days, but Doctor Sprenger, who has been in Washington recently, would know more about that.

Dr. R. A. Sprenger, Senior Consultant, Quarantine and Regulatory, Medical services Branch, Department of National Health and Welfare: That is close enough.

Senator McGrand: And during that incubation period he may give no evidence whatever that he may have lassa fever?

Mr. Kaplan: That is correct.

Senator Bonnell: Why can't you set this bill up so that the Governor in Council can add diseases from time to time, rather than bringing it to the House of Commons and to the Senate and to the Governor General each time?

Mr. Kaplan: Will, in fact the present act does contain the power, by Order in Council, to add diseases to the schedule, but an Order in Council normally takes a longer period of time than might be in the national interest in a particular case, so this bill is bringing in a supplementary power.

Senator Bonnell: Are you telling me that Orders in Council have so much red tape in them today that you can get through two houses of Parliament and the Governor General more quickly?

Mr. Kaplan: No. We are not doing this in a moment to apprehend some individual at the border, which might be what an Order in Council might require.

Senator Bonnell: Then perhaps I might suggest that there should be a section in this act giving power to the Governor in Council so that if in, say, July a new disease is discovered and they want to stop somebody with it from coming into Canada freely, then they can add this disease automatically to the Quarantine Act without bringing Parliament back.

Mr. Kaplan: It could be done by Order in Council, but that is not as efficient a way of proceeding. For an Order in Council the name of the disease would have to be known. In this case, with the minister's approval and subject to judicial review, a person could be detained with some new and not fully understood disease.

The Chairman: What is the restrictive force of this agreement? You say it is limited to four diseases. How can you add more if it is limited in that way? You would be transgressing some agreement.

Mr. Kaplan: Yes, we would. If we acted by Order in Council to add a disease to the schedule, we would be violating our literal agreement at the World Health Organization. So that would be a second reason, senator, for not wanting to proceed in that way.

Senator Bourget: Any time you do something, you have to inform the world Health Organization?

Mr. Kaplan: Yes; we always do.

Senator Bourget: Up to now there are only two countries which have done the same, is that correct—the United States and the United Kingdom?

Mr. Kaplan: I mentioned only the two, but there are others in addition to the United States and the United Kingdom.

The Chairman: What would be the case if a person came from India, or Southeast Asia, and had been exposed to leprosy, which is not too unlikely? Leprosy is a difficult thing to diagnose. What would happen in that case?

Mr. Kaplan: As I understand leprosy, and I stand to be corrected, it is a disease which has a long incubation

period. It takes several years to incubate; it is not a disease which could stimulate an epidemic.

Senator Bourget: It is contagious, though.

Mr. Kaplan: It is, but it requires a prolonged period of contact—years and years. Is that not correct?

Dr. Black: That is correct, Mr. Kaplan.

The Chairman: He would still be a menace to public health, would he not? The fact that it might take three or four years before you discover you have the disease is one thing, but you would have contracted the disease at the time of entry or shortly after.

Mr. Kaplan: The quarantine law permits us to detain a person, subject to all the safeguards, until the person is no longer a contagious threat. If one were to resort to this statute in order to control leprosy, that would be an impractical solution because the quarantine period would be too long. You could not hold the person for years until he ceased to be a carrier. Perhaps Dr. Black would care to comment on this.

Dr. Black: Leprosy is not a highly contagious disease and, as such, is not a danger to public health. Nowadays people work with lepers at first-hand. They do not use sophisticated isolation techniques. It is not necessary. It is quite a difficult disease to contract. Indeed, we have a number of people in Canada being treated for leprosy now, but we do not expect it would be necessary to quarantine people with leprosy. We treat them in hospitals. There is a minimum danger to public health.

Senator Smith (Queens-Shelburne): Mr. Chairman, although this does not bear directly on the bill, I wonder if someone would be able to give us a short report on the world situation with respect to smallpox at the present time. The last bill which did this kind of amending was for the purpose of making it no longer necessary to have vaccinations for smallpox in order to re-enter Canada. What is the world position now, and how is our policy working?

Mr. Kaplan: Senator Smith, you have given me the opportunity to make public the latest statement of our department on that subject. I would be delighted to be able to make this information public.

The Chairman: By all means. Make your statement, please. Is that agreed, honourable senators?

Hon. Senators: Agreed.

Mr. Kaplan: From the time when smallpox became reportable to the Dominion Bureau of Statistics, around 1928, Canada experienced a few cases of smallpox each year until the end of World War II. There were 120 cases in 1938; 198 cases in 1939; 5 cases in 1945; 2 cases in 1946. The only case since 1946 has been one importation from South America in 1962 at Toronto. There have, of course, been many alerts, but prompt investigation has disclosed some other cause for the illness.

In Great Britain endemic smallpox disappeared about 1934. There have, of course, been several importations since and more recently a small outbreak arising from the escape of the virus from a laboratory.

The eradication campaign against smallpox was initiated in 1966, but much of the infrastructure on which is based

the remarkable success story was established in the previous ten or twelve years. The most important aspect in the successful eradication of smallpox was the development of freeze-drying techniques to supply large quantities of stable smallpox vaccine.

In 1962 the Government of India, among several other countries, decided to institute a smallpox eradication program. WHO supplied consultants and advice and UNICEF supplied money for the manufacture of freeze-dried vaccine in India. The U.S.S.R. gave the Government of India millions of doses of vaccine.

In 1967, five years later, India suffered a very severe epidemic. WHO intensified its efforts in 1967. The disease at that time was endemic in 30 countries and 12 others imported it that year. There were some 131,000 cases reported that year and it has been estimated that there probably were 2½ million cases.

The disease is now contained in the remote regions of Ethiopia, and this week, which is pretty current information, only 51 cases of smallpox remain in the world.

Senator Smith (Queens-Shelburne): What a tremendous change that is.

Mr. Kaplan: It is a real success story.

Senator Smith (Queens-Shelburne): It certainly is.

Mr. Kaplan: I am glad to say that the smallpox vaccine is manufactured in my own constituency. Ironically, there is a declining demand for the product because of the process of eradication of the disease.

Senator Bonnell: Maybe someone will start producing a Lassa fever vaccine.

Mr. Kaplan: We hope so. There is not one yet.

Senator Smith (Queens-Shelburne): Mr. Chairman, the virtual eradication of smallpox has taken a long time. According to my recollection of what I have read, the earliest smallpox vaccination, which goes quite a distance back in the history of North America, took place in my home town in the late 1700s.

Senator Bonnell: You have a good memory.

Senator Smith (Queens-Shelburne): Yes. I am getting quite old, too. The then leader of the community, who was "chief cook and bottle washer"—a representative in the first legislature and that sort of thing—set the example for those who were the inhabitants of the town by having his own family vaccinated. Unfortunately, one of his children died, which was a sort of sacrifice, but everybody else lived, and he was able to influence everyone in the community to protect themselves against what was then known as the cowpox, as I remember it. All of that information is contained in a diary which came to light only 50 or 60 years ago.

Mr. Kaplan: What is regrettable is that new diseases keep turning up. If there were only the four diseases, then with one down there would be only three left to worry about, but with the tremendous amount of international contact and travel, and the opening of so many remote areas of the world, new diseases keep appearing.

Senator Smith (Queens-Shelburne): The smallpox story is one of the great advances in world medicine.

The Chairman: Many viruses develop new strains and adjust to vaccines, but apparently the smallpox germ has not succeeded in doing so.

Mr. Kaplan: No, it has not, and the hope is that it will be eradicated within a short time.

The Chairman: I believe you mentioned the plague as one of the four diseases.

Mr. Kaplan: Yes.

The Chairman: As I understand it, the plague has developed different strains, has it not?

Dr. Black: It has, Mr. Chairman, but they are amenable to treatment. The various strains of the bacillus which cause the plague are amenable to treatment. There is a vaccine available, but the disease itself can be treated with antibiotics.

Senator Bonnell: Mr. Chairman, under this act, if a quarantine officer suggested that a person should have a medical examination, would that examination be paid for by the Government of Canada or would it have to be paid for by the person attempting to enter Canada?

Mr. Kaplan: We have the authority, under the act, to require the carrier bringing the individual to our country to pay for the cost of any steps taken under this act. Of course, the carrier in turn can require that the individual pay.

Senator Bonnell: What do you do in the case of those who arrive without funds and must undergo this examination? Do you go back to the carrier?

Mr. Kaplan: No, as far as the government is concerned, we have the right under the act, which we would exercise, to claim payment from the carrier, which means the transportation company which brought the individual into the country.

Senator Bonnell: That is in another section, apart from this amendment.

Mr. Kaplan: Yes, it is not being amended. It is section 15 of the act.

The chairman: Are there gaps still not covered by this bill? If this bill became law tomorrow and new diseases were discovered, do you have all the means required to take care of the situation?

Mr. Kaplan: One hopes so, this is a new act. Quarantine legislation has existed in our country for 100 years. This act is new, as of 1972, and in that time we have had to come back for this amendment, which I hope will give us sufficient foresight and authority to live with this act for a considerable period of time. However, I doubt if the minister would be prepared to promise that he will not be back for amendments if that were determined to be in the public interest.

Senator Bonnell: In the case of someone detained for 48 hours, is board and lodging also charged to the carrier?

Mr. Kaplan: To the transportation company, yes.

Senator Bourget: Do you have any difficulty in collecting from the carriers?

Mr. Kaplan: Not so far.

Senator Bonnell: Approximately how many would have been stopped in the last year or five years?

Mr. Kaplan: Forty million travellers, including Canadians, cross our borders every year, so the percentage would be very low. However, in absolute numbers, Dr. Sprenger, could you give us figures?

Dr. Sprenger: There has not been a detention under the Quarantine Act, to my recollection, for at least 15 years.

Dr. Black: We have, however, detained people for the purposes of examining them and determining that they do not have smallpox.

Mr. Kaplan: But we have had no overnight guests in our quarantine stations?

Dr. Sprenger: I will clarify my previous statement by saying that the last case of smallpox endemic in Canada occurred in 1946 and, as Mr. Kaplan pointed out, there has not been occasion to detain cases of smallpox.

Mr. Kaplan: What about other infectious diseases?

Dr. Sprenger: There has been no case in which an order of detention has been made, as I said, to my recollection within the last 15 years.

Senator Bonnell: How many people were stopped, help up and examined without being detained, then?

Dr. Sprenger: That is a very good question. I couldn't give you a figure, but I will give an estimate on the basis of the number of alerts that have occurred in recent years. Perhaps half a dozen a year for brief periods, the "brief" meaning three or four hours, until the diagnosis could be ascertained and a major quarantine disease excluded.

The chairman: Do honourable senators wish to proceed through the bill clause by clause?

Senator Bonnell: I move that the bill be accepted as read.

The chairman: Shall the bill carry?

Hon. Senators: Carried.

The Chairman: Shall the title carry?

Hon. Senators: Carried.

The Chairman: Shall I report the bill without amendment?

Hon. Senators: Agreed.

The Chairman: Thank you very much, gentleman.

The committee adjourned.



Government
Publications

FIRST SESSION—THIRTIETH PARLIAMENT
1974-76

THE SENATE OF CANADA

PROCEEDINGS OF THE
STANDING SENATE COMMITTEE ON

HEALTH, WELFARE AND SCIENCE

The Honourable C. W. CARTER, *Chairman*

Issue No. 15

THURSDAY, MAY 6, 1976

Third Proceedings on:

The Study of the feasibility of a Senate Committee inquiring
into and reporting upon crime and violence in contemporary
Canadian society.

(Witnesses—See Minutes of Proceedings)

THE STANDING SENATE COMMITTEE ON
HEALTH, WELFARE AND SCIENCE

The Honourable C. W. Carter, *Chairman*.

The Honourable M. Lamontagne, P.C.,
Deputy Chairman.

AND

The Honourable Senators:

Argue	Inman
Blois	Langlois
Bonnell	Macdonald
Bourget	McGrand
Cameron	Neiman
Croll	Norrie
Denis	*Perrault
*Flynn	Phillips
Fournier	Smith
(<i>de Lanaudière</i>)	(<i>Queens-Shelburne</i>)
Goldenberg	Sullivan—(20)

**Ex officio* member

(Quorum 5)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate of Canada, Thursday, 18th December, 1975:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator McGrand, seconded by the Honourable Senator Eudes:

That the Senate considers it desirable that a special committee of the Senate be established at an early date to inquire and report upon crime and violence in contemporary Canadian society.

And on the motion in amendment thereto of the Honourable Senator McElman, seconded by the Honourable Senator Carter;

That the motion be not now adopted but that the subject-matter thereof be referred to the Standing Senate Committee on Health, Welfare and Science.

After debate,

In amendment, the Honourable Senator Asselin, P.C., moved, seconded by the Honourable Senator Choquette, that the motion in amendment be amended by removing the period at the end thereof and adding the following words:

"and that the Committee be instructed to look into and report upon the feasibility of a Senate Committee's inquiring into and reporting upon crime and violence in contemporary Canadian society and that, if the Committee decides that such a study is feasible and warranted, it be further instructed to set down clearly how, by whom, and under what precise terms of reference such a study should be undertaken."

After debate, and—

The question being put on the motion, in amendment, of the Honourable Senator Asselin, P. C., seconded by the Honourable Senator Choquette, to the motion, in amendment, of the Honourable Senator McElman, seconded by the Honourable Senator Carter, it was—

Resolved in the affirmative.

The question then being put on the motion in amendment of the Honourable Senator McElman, seconded by the Honourable Senator Carter, as amended, it was—

Resolved in the affirmative."

Robert Fortier,
Clerk of the Senate.

Minutes of Proceedings

Thursday, May 6, 1976
(19)

Pursuant to adjournment and notice the Standing Senate Committee on Health, Welfare and Science met this day at 11:05 a.m., the Chairman, the Honourable Senator Carter, presiding.

Present: The Honourable Senators Bonnell, Bourget, Carter, Croll, Denis, Fournier (*de Lanaudière*), Macdonald, McGrand, Norrie and Smith (*Queens-Shelburne*). (10)

Present but not of the Committee: The Honourable Senator McElman.

In attendance: Mr. Hugh Finsten, Research Officer, Research Branch, Library of Parliament.

The Committee resumed consideration of its Order of Reference dated December 18, 1975, "that the Committee be instructed to look into and report upon the feasibility of a Senate Committee's inquiring into and reporting upon crime and violence in contemporary Canadian society and that, if the Committee decides that such a study is feasible and warranted, it be further instructed to set down clearly how, by whom, and under what precise terms of reference such a study should be undertaken.

The following witness from the Department of National Health and Welfare was heard:

Dr. P. G. Banister,
Director,
Bureau of Surveillance Services.

After discussion and on motion duly put, the Committee AGREED it would call further witnesses before presenting a final report to the Senate.

On Motion of the Honourable Senator Bourget, it was AGREED that the letters, briefs and submissions received by Senator McGrand on the subject matter under study by the Committee be printed as appendices to this day's Minutes of Proceedings and Evidence. The appendices are as follows:

No. 1 Letter received from Dr. B. A. Boyd, M.D., Medical Director, Mental Health Center, Ontario Ministry of Health, Penetanguishene, Ontario.

No. 2 Letter received from Dr. R. E. Stokes, M.D., Brasebridge Community Mental Health Service, Riverside Centre, Brasebridge, Ontario.

No. 3 Letter received from Dr. Eileen S. Whitlock, Assistant Executive Secretary, The National Association for the Advancement of Humane Education, The University of Tulsa, Tulsa, Oklahoma, U.S.A.

No. 4 Letter received from Dr. C. K. McKnight, M.D., Chief of Service, Forensic, Clarke Institute of Psychiatry, Toronto, Ontario.

No. 5 Letter received from Dr. Gordon E. Warne, M.D., Chief, Child and Adolescent Service, Clarke Institute of Psychiatry, Toronto; Assistant Professor of Psychiatry, University of Toronto, together with three Addenda entitled "Preventive Implications of Development in the preschool years" by Lois Barclay Murphy; "Supplemental Care" and "The High Risk Infant", two position papers from the Ontario Psychiatric Association subcommittee on child psychiatry.

No. 6 Letter received from Dr. John T. O'Manique, Associate Professor of Philosophy, Saint Patrick's College, Carleton University, Ottawa; Member, Third Research Team for the Club of Rome.

At 12:17 p.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Patrick J. Savoie,
Clerk of the Committee.

The Standing Senate Committee on Health, Welfare and Science

Evidence

Ottawa, Thursday, May 6, 1976.

The Standing Senate Committee on Health, Welfare and Science met this day at 11.05 a.m. to look into and report upon the feasibility of a Senate Committee's inquiring into and reporting upon crime and violence in contemporary Canadian society.

Senator Chesley W. Carter (*Chairman*) in the Chair.

The Chairman: Honourable senators, we want to accomplish as much as we can, so I call the meeting to order and introduce our witness.

We have with us this morning Dr. Banister, Director, Bureau of Surveillance Services, Department of National Health and Welfare. I understand that Dr. Banister has a short oral presentation to make, which will open the meeting for questions.

Dr. P. G. Banister, Director, Bureau of Surveillance Services, Department of National Health and Welfare: Honourable senators, I notice in the proceedings of the previous meetings that your witnesses introduced themselves, so perhaps I should follow that pattern and give you a few words on my background, which would allow you to see my interests. Basically I am pediatrician, who started with a period of research into the causes of blindness in premature infants. This was carried out in Oxford and in Montreal. Following this I went into pediatric practice in Montreal for a number of years. I found myself becoming more interested in the determinants of infant and adult behaviour, and I ended up by spending a year studying at the Institute of Human Relations in London. The child department there is headed by John Bowlby, whose name has come up before.

I then came back into practice and found that my range of interests was broadened even further. So one way and another, I ended up in the Department of National Health and Welfare, in the field of maternal and child health, which really remains my principal interest.

Currently, I am doing mostly administration. The programs that I administer are fairly narrow, one of which is related to birth defects; we are studying the causes of birth defects and their numbers across the country. The other two programs relate to drug adverse reaction and poisoning, which are not, I think, relevant to this discussion.

The few points which I should like to bring up seem to be related to the research papers, factor A, in which there is a paragraph concerning the fetus and environmental factors.

The Chairman: That is in the research paper?

Dr. Banister: Yes. It mentions that stressful pregnancies have been linked to mental retardation, ill health, malformations and personality defects.

These things were brought out very nicely in this research paper, and I can see that you must all be well aware of the complexity of the factors which you have been asked to consider. I think you have quite wisely decided to limit your attention to certain areas. You have excluded, as I understand it, drugs and socio-economic factors, and some of these things.

The interest that I have had has concerned violence and the fact that John Bowlby has alleged that there may be some link between severe maternal deprivation and what could be called antisocial behaviour later on. His original paper was entitled "Forty-four Juvenile Thieves." It was on the basis of the psychoanalytic material which he derived from interviewing these young criminals that he developed the hypothesis that there might be a link between the maternal child relationship and future behaviour.

There has been an incredible amount of research devoted to this subject over the past 25 years. It is interpreted in one way by some people and in another way by others. Certainly his original thesis was based on the kind of deprivation which fortunately we do not see too much of nowadays. But we are still left with the suspicion that the quality of the reaction between mother and infant must have something to do with our future personalities. The research paper you have received brought out the fact that perhaps some of this has to do with the child itself. In other words, if the child is damaged at birth, or is different in some way, then perhaps any mother would interact with a damaged baby in a different way from a normal baby. I think this is perhaps what you are trying to get at: Do we have babies who are different at birth and who will develop differently if handled in other than a normal way, and do they need to be handled in a special way in order to develop more normally?

I have not been concentrating on this subject for quite a long time, so I apologize that I am not up to date in the literature. There are recent papers which still raise the question of this relationship.

I should like to draw your attention to ethological studies, in which we try to interpret human behaviour by looking at animal behaviour. One interesting point is that in a lot of mammals there is never aggression against the young. It is not the kind of behaviour which occurs. If there is an attack on the young, usually there is a mechanism or signal which switches off the attack. I believe one of the classical ones is that of the wolf, where the baring of the neck, or putting it into a certain position, stops the attack. So the child abuse we are seeing so much of must be a manifestation of very abnormal behaviour. I realize there are other committees looking at this. Nevertheless it is a matter of great concern to me.

I will not make any further introduction, except to say that there may be some avenues along which research

could be pursued. I was just talking with Mr. Reed in the Justice Division of Statistics Canada, to ask him if it might be feasible to get information on contacts with the judicial system by individuals and relate it back to the events around birth. It was an idea which occurred to me. My idea would be that if we presume that there is a population of infants who are damaged at birth, that we could look for their names, look for them coming into contact with the judicial system later. Prematurity has perhaps been one area which may lead to brain damage. Birth injury used to but, in view of the fact that deaths from birth injury have declined very markedly over the past 10 years, it is probable that birth injury itself would not be a fruitful factor to pursue. Prematurity runs at the rate of between 6 per cent and 8 per cent, and if we took mothers under twenty, it is higher than that; it is 8 per cent or 9 per cent. If we selected the population of premature infants from the birth records, and we then linked them, or looked for their names, in lists of contacts with the judicial system, admissions to penitentiary or coming before the courts, or something, it might be possible to give you hard evidence about whether prematurity was related to an increased contact with the judicial system.

Mr. Reed of the Research & Analysis Section, Statistics Canada, has designed a research program entitled "A Study of Criminal Histories" and a study of explanatory factors in those histories. Mr. Reed was thinking of going forward. In other words, constructing a file on people who had contact with the system to determine what happened to them afterwards, depending on the treatment they received—whether they were paroled or had received long or short sentences, and so forth. I think this is a very interesting study design and I can see its possible usefulness in linking prematurity and birth defects in infants with criminality later in life.

The Canada Health Survey is currently being designed. It is possible that members of the committee might consider it a vehicle to explore some of the factors of relevance to their inquiry.

That concludes my opening remarks, Mr. Chairman.

The Chairman: Thank you, Dr. Banister. I perhaps should point out to you that the primary question before this committee is the feasibility of a Senate committee's conducting a further inquiry focussed on the area of causes of crime and violence and linking those causes to circumstances surrounding birth and the behaviour of young children. The purpose of the inquiry would be to come up with some means of diagnosing potential criminal tendencies, or criminal behaviour, which could be remedied before the child developed a set pattern of criminal behaviour.

Senator McGrand will lead off the questioning.

Senator McGrand: Mr. Chairman, I want to thank Dr. Banister for his opening statement. Had he made that statement on May 14, 1975, I am sure we would be much further ahead now.

Members of the committee have been provided with all the material I have received from the medical people in connection with this proposed study, so there is no point in repeating it.

I want to emphasize for members of the committee that I am not after an investigation covering the whole field of crime. It is much too large a subject. I made that clear when I spoke on this inquiry on May 14 of last year. I

should like to limit the proposed study to how and why a boy with psychological damage, regardless of its source, at the age of two becomes a psychopathic killer at the age of 22.

I have before me an article which appeared in the *Globe and Mail* of April 3. It is an article on one John Thomas Graham, age 26, who was sentenced to life imprisonment for the mentally criminal insane. It gives his story. He was brutalized as a boy at both home and in school: his parents beated him; he was beaten in school because he had a learning problem. Dr. Davidson, a psychologist, who has studied his case intimately, says that it was a learning problem, probably due to something in his early life, such as lack of oxygen. Nevertheless, nothing very much was done to help him. At the age of 26 he ends up a convicted murderer. There are hundreds of such cases. Generally, they start out as a school problem.

To illustrate my point, if a young boy under the Ottawa School Board is exhibiting some difficulty, he is seen by a school psychologist who might advise that he go to the Royal Ottawa Hospital for assessment. He does not get any better and eventually becomes a school dropout. He then gets into trouble and is brought before the juvenile court. He now comes under the jurisdiction of the Province of Ontario. He gets worse. He commits murder or rape, at which time he comes under the federal jurisdiction.

What means do you have within the Department of National Health and Welfare to ferret out individuals with a high risk potential for crime?

Dr. Banister: I think what you are describing, senator, is a case history, which would mean, essentially, that the child in question, or the young boy in question, would have to be seen through the health care system of a province, unless he were an Indian or an Eskimo. Therefore, I would have to say that within the Department of National Health and Welfare there would not at the moment be any system whereby the federal authority would come in contact with that individual.

Senator McGrand: I am aware of that. That is why I posed the question. There is no way that the federal authority can coordinate the care for the problem child who is seen by the provincial authority and correlate that with federal program; there is no means by which that can be achieved, is there?

Dr. Banister: No. Quite frankly, I think that treatment at school age may be too late. I note that one of your previous witnesses, Dr. Langley, made the comment that he had not met a child or a boy who would not respond to kindness and warmth, or words to that effect. That is possibly true, but experience suggests that people with these severe abnormalities of behaviour, the anti-social, psychopathic individuals, are not treatable, and if in fact that trait is developed very early in life, then this approach may be too late. That is why I believe we should concentrate our efforts on prematurity and circumstances surrounding the birth of infants.

Senator McGrand: That is what I have been working at all along. Are you saying they are not treatable after they go beyond a certain stage? Are you going along with the old saying that you cannot teach an old dog new tricks? You cannot change the personality of a person once it has been set. It is like putting it in concrete. However, when it is flexible, I think then you can. It would seem to me that if you could detect this sort of thing at a very early stage, a

very young infant for example, a young child before he walks, I believe it would be possible.

Dr. Banister: I think your comments are interesting because this is what led me from my pediatric practice to child psychiatry, the hope that in my practice I would be able to recognize early behaviour patterns. It is on the basis of inter-reaction between mother or foster mother and infant that I could delineate some behaviour patterns, which I could modify. This I found was very difficult and considered perhaps the best approach was a more global one, where the whole concept of mothering behaviour should be looked at. Maybe our children are not getting the kind of care and attention that they deserve.

We have a declining birth rate and every child who is born merits the chance to develop to his or her full potential. I think it is difficult to determine predictive factors on an individual basis but maybe the senators would like to look at it in terms of a general approach to child rearing practices.

Senator McGrand: In my first letter, Mr. Chairman, which I sent to you, copies of which were distributed to all members of the committee, I mentioned that a study of some 1,600 breech deliveries had been conducted in Denmark and they discovered that 25 per cent of them had learning problems and that 25 per cent of them failed to pass one or two, and sometimes three, grades before they got to grade 9. I practiced medicine for 40 years and I was unaware that breech deliveries were so hard on a baby. Also, 15 of the 16 most dangerous murderers had suffered damage at childbirth.

You were speaking about this mother-child relationship. I am sure you are familiar with the work of the doctor in Los Angeles who has tried to establish the fact that the mother should see, hear and smell the baby at the time of birth. Then, that has been followed up by the doctor in Paris who delivers babies in the dark and does not let anyone speak until the mother has talked to the child. Then there was the Japanese doctor, investigator, who took these children who cried incessantly, they just would not stop, and he made a tape with an electrode attached to the uterus of the pregnant woman and when he played the tape of the sounds of the pregnant woman the child went to sleep. These were disturbed children, or they would not be crying. This, I think, is a field to explore.

You mentioned what took you into this field, and I am now going to tell you what aroused my interest in it. Over 20 years ago a girl, a nurse, was murdered on the banks of the Saint John River and her car stolen. About two months later a girl was murdered in a gravel pit in northern Ontario. The car seen at the gravel pit bore Nova Scotia licence plates and it was later found that the car belonged to the nurse who had been killed. The fellow who was picked up was a Mr. Frayner from Halifax. He was hanged. He was age 30. I tried to find out as much information as I could about this matter but no one knew too much about it. I wrote letters, made telephone calls trying to find out the background of this 30-year-old man who became a psychotic killer all of a sudden. I was told there was no information on him. I would think he would have to grow up like that. The court was not concerned with this. They wanted to know whether he murdered the girl or not. That was all.

I had another interest in this matter back in 1945 or 1946, when we were trying to set up a mental health service in New Brunswick. I had a long talk with Dr. John Griffin, the executive director of the Mental Health Association. At

that time he told me that, in the opinion of the investigators, the psychology of the day—and this was 1945—was that a lot of people believed that children, even before birth, could be influenced by their surroundings and that mental health started at the time of birth. Now, that is nearly 40 years ago. We have been playing around with this thing and yet no one has ever been able to put it together.

The Chairman: Do you have any comment?

Dr. Banister: Well, I agree we have not been able to put it together, but this is a measure of the complexities we face. I was scribbling last night and I came up with a very simplified diagram of some of the factors which I thought were relevant and I entitled this "The Genesis of Anti-Social Behaviour." I gave up after a while because there were so many arrows going in so many different directions that it became meaningless.

The problem with the case history approach, the retrospective approach is such that we really do not know if what is shown on small numbers of breech deliveries is valid for the total population. There are communities in which anti-social behaviour is very low. There are the religious groups. Could it be possible that breech deliveries of Mennonites would also produce criminals, or do they never become criminals?

Senator McGrand: That is one question I asked when I made that speech, why is it that there are certain groups where crime is virtually unknown—the Mennonites being one and the Seventh Day Adventists, for example?

Dr. Banister: Do you not think it might be of interest to find out if there is a statistical association between prematurity and crime?

Senator Croll: What is the definition of a "breech"?

Dr. Banister: It is where the baby, instead of coming head first, comes tail first.

Senator Croll: Why has the department not done significant work in this field?

Dr. Banister: On birth injury?

Senator Croll: The field about which we are speaking.

Dr. Banister: Most of the work in the department has to be done through research grants. I cannot, of course, speak definitively here because I do not know of all the research grants. However, when research projects come up in this area, they are funded if they appear to be valid. Most of the work has been done on a co-operative basis. Because you need large numbers before you can really draw conclusions.

For example, in the United States there was a study on 50,000 births. It is for this reason we are collecting information on birth defects from something like 225,000 births in the country. At the moment the only damaging effect I can see, which may produce large numbers, would be prematurity, where there are about 25,000 premature deliveries a year in this country.

There are many criminals, and if there was going to be an association, you would have to take something which had a large number of events. Breech delivery is not that common.

Senator Croll: How big is "premature"?

Dr. Banister: Well, a premature baby is defined as weighing five and a half pounds or less at birth.

Senator Croll: I meant in numbers.

Dr. Banister: Well, 8 per cent, and probably 25,000 a year. Something like that.

The Chairman: that is not a sufficiently large balance?

Dr. Banister: It is, yes; but this possibility of studying it can only be entertained at the federal level. For example, if the Department of Justice statistics division were able to carry out their study and prepare a master file, this would give information on the contacts an individual had throughout his life, following his first contact with the law. In other words, if he were a juvenile and came in contact with a court, he would then be on record and he could be followed, to see what happened after his first contact with a court.

Our birth records go back a long way. Now, the other way is to go forward, which is a much better way; that is, to take a sample of all premature births in Canada over a certain number of years and look for these people appearing in the system. If they do not appear, they are not criminals; but if they appear, then you can tell what type of crime they have committed, and what their future history might be.

Senator McElman: What would be the possibilities, doctor, at this point in time, of going back, let us say, ten years on premature births in Canada, tying that in with the study which is now being set up, and taking samplings throughout the country; and also taking totals in test areas such as, let us say, the city of Toronto, a large urban centre, and another area with a rural base—a small community, with, let us say, a large farming community around it—and running them through to determine what has happened over the last ten years in those cases? Is there enough data available to permit this to be done effectively?

Dr. Banister: The vital statistics division or department of the province would have data which could give you the place of birth and the weight at birth of any infant born in the province, and of course, this is centralized in Statistics Canada.

Senator McElman: This is computerized, is it?

Dr. Banister: Yes. If we only went back ten years, then the oldest child would only be ten years old. I am not aware of any way of linking school records with birth records. If there was one point I would want to make today, I think it would be that we should be looking at ways of utilizing information that is already available of the type you have discussed, and putting it together to draw useful conclusions, rather than going out and doing further studies and collecting more forms. It is possible that in some provinces such information is available, say, on school records; but if you were to go back 20 or 30 years, then you would not need to rely on school records, you could look at something else; you could look at unemployment.

Senator McElman: And the justice system.

Dr. Banister: And the justice system; but as I say, all of these things are feasible, and I can give you the name of a witness who is really able to tell you, because this is his major specialty. The feasibility that I am speaking of,

however, does not include financial costs. The studies I have mentioned, carried out by Statistics Canada, cost a lot of money, and it may be that they do not have the funds set aside to do this sort of thing.

The Chairman: Is the information available, supposing a researcher wanted to make a survey of, for example, a thousand child delinquents, and wanted to go back and find out what circumstances had attended the birth of those children, from the point of view of whether it was a breech birth, or whether the mother was diseased, or whether there was any damage done? Is that information available in provincial statistics? It would have to be in the provincial records, would it not? Is that type of information available?

Dr. Banister: The answer is yes, because 96.6 per cent of Canadian infants are born in hospitals, and any hospital birth should be the subject of a record. If you look hard enough and spend enough time, the information is available.

Senator McGrand: It is always recorded as to whether it is a breech delivery or not, and it is recorded as to whether it was necessary to have oxygen at the time of delivery, and so on. There is a lot of information available.

Senator Bourget: And those statistics would be available for the past 25 or 30 years, would you say?

Dr. Banister: I am not sure about that many years, because records in various hospitals are dealt with in different ways. In many provinces there is a form called the physician's notice of live birth or stillbirth, on which has been recorded at various times these types of data. There is a space in which to indicate whether there is a birth injury, yes or no; whether there is a congenital malformation, yes or no; the age of the mother and her parity. This information has been recorded, but it may be that if you went back too far you would only be dealing with the birth weight and the age of the mother.

Senator Bourget: What about other countries? Has that type of statistic been kept by other countries, on the basis of which research has been made on this particular question?

Dr. Banister: In general, the developed countries are the ones with the best records. The United Kingdom is a good example. There are probably good records there. The Scandinavian countries, particularly Finland, and also a lot of the socialist countries, like Czechoslovakia, have good records also. But I cannot answer that question directly; I do not know about the quality of the statistics back that far.

Senator Bonnell: Mr. Chairman, I just wonder if Dr. Banister could tell us if, in his view, he feels that we, as a committee of the Senate, could do anything to correlate the information that is at present available across the country or across the world, and if we could do anything to get other people interested in research in these fields. Does he feel that it would be worthwhile for Canada, and worthwhile for the reduction of crime, for us to set up a committee to investigate crime and violence in youth? Would you recommend that such a committee be set up, Dr. Banister?

Senator Bourget: That is a tough question, but it is a good one.

The Chairman: It is a pertinent question for us.

Senator Bourget: It is the main question we have to face.

Dr. Banister: It is very rarely in government that one gets the opportunity to put forward personal viewpoints. If I were to start with the question of possible benefit to Canada, drawing attention to the need for research in certain areas and to the need for funding of research in certain areas would be worthwhile. My own feeling is that if you were to draw attention to current trends in child rearing practices, the need for a very careful examination of trends in day care, and a careful examination of health care in the area of maternity and maternal and child health, this would be worthwhile.

Regarding the possibilities of explaining crime, I think it is unlikely that we would come up with answers; but it is possible that, as I say, we might be successful in bringing to the attention of Canadians the need for preventive action, for better care for our children, say, with learning defects and birth defects. We could give visibility in areas where perhaps visibility is needed.

The Chairman: You spoke earlier about Dr. Reed's work. He is working through Statistics Canada on criminals...

Dr. Banister: Criminal history.

The Chairman: Of what age group—a particular age group?

Dr. Banister: Any. It starts with juveniles. Apparently—I am talking without full knowledge, because this is completely outside my sphere...

The Chairman: He would not be dealing with anyone who was not old enough to come before a court, to have a criminal record?

Dr. Banister: No.

The Chairman: So his work would not be relevant to what we are trying to focus on here?

Dr. Banister: Except prospectively, in the way I have indicated, that if you have information on the first 10 years of life and you wish to launch a prospective study...

The Chairman: Is he going right back to the birth of the child?

Dr. Banister: This idea of going back to the birth is one that I suggested to him just this morning, because I had been thinking of ways...

Senator Croll: It looks like premature birth!

Senator Bonnell: Can Dr. Banister tell us if it is his opinion that crime and violence in youth is affected by before-birth influences, at-birth influences, or their environment thereafter?

Dr. Banister: Well, we have two points. First, before birth. I am certainly very well aware of the...

Senator Bonnell: —chromosome changes, or something or other?

Dr. Banister: You are talking about genetic diseases?

Senator Bonnell: Yes, and so forth.

Dr. Banister: I do not believe at the moment that this is one of the major factors. We are talking about a lot of

crime and violence. We know that about one-half per cent of babies have chromosome aberrations. There are other genetic diseases which might conceivably be related to abnormal behaviour, but I think this is probably not worthy of the committee's time. The other influences on the unborn child are scientifically very hard to validate. The birth injury, the prematurity, and the first week of life, I do not know. That is why I am saying that no one has really done a study to test statistically whether there is a significant association between birth events and future crime. No one knows or, at least, I am not aware of any studies. I would be left, then, with the feeling that the period from birth on is probably the most important one.

Senator Bourget: But there are no statistics regarding the last period you mentioned?

Dr. Banister: No, except to say that in families it is possible to study twins. We all know examples of where there are many children in a certain family, and one of them is outstanding and one of them is not, one of them is a criminal and one is not. This is about the only evidence we have. I suppose that twin studies might give us data.

Senator McGrand: A lot of people still believe that crime is inherited from generation to generation. It has always been my impression that all that a person can inherit is the culture of his people. We inherit culture. If you do not care to answer that, I do not blame you. Despite all the information that is readily available, if we look for it, most psychiatric murders concern victims of the society in which they grew up. Nevertheless, despite that, 80 per cent of people will say, "Hang him! Make him suffer! Why is it that, from all this information that is available, our society is not aware that it is better to go looking for the potential criminal when he is able to walk than to try to hang him or not hang him when he is 30 years of age?"

The Chairman: The witness shrugs!

Senator Bonnell: I wonder if Dr. Banister could tell us where the jurisdiction lies so far as the health field is concerned. It seems to me that health, welfare and education, and such things, are within the provincial jurisdiction; whereas we in the federal field might have more to do with justice. If some research were taking place into the health of children, at birth, before birth and immediately after birth, would we not have to have very close cooperation with provincial health departments rather than, necessarily, the national health department?

Dr. Banister: Yes. The date, of course, are all provincial. Any studies that we do, for example, with our birth defects are in complete cooperation with the originating province, and explicitly any research is done with their consent, knowledge and approval.

Senator McGrand: That is why countries like Denmark and Finland do not have provincial governments. It is all federal. They are able to assimilate this better.

Senator Croll: I think you are off the track, senator. Dr. Banister started on something. Births that take place in 1976 are reported to the federal government at the end of the year.

Dr. Banister: Yes.

Senator Croll: Every birth, every death. I think they will also indicate whether it is premature, and so on. So that all the information which provincial governments may have

may get here a year late, but it gets here, to our federal department.

Senator Bonnell: I do not agree with you.

Senator Croll: But he is agreeing with me.

Senator Bonnell: I do not agree with him, either! Certain statistics, as you said, are in the federal field, but you do not find that out in a narrow way. We do not find out if there was oxygen used at birth. We do not find out if there were forceps, high forceps or low forceps. We do not find out anything, really, except that a baby was born, that it was a boy or girl, and we did not even give him a name. We keep that within the province . . .

Senator Bourget: And in the hospitals.

Senator Bonnell: Therefore, the federal has certain broad information only, but the detailed information must come through the provinces where the jurisdiction lies under the BNA Act.

Senator McGrand: Countries that do not have provincial governments do not have that worry.

Senator McElman: It is not just in the health field. The question we are studying here involves not only health but also education. If a pilot program study were being put into force, the educational level would have some of the most important material to feed into such a study.

The Chairman: Perhaps the witness could reply to the question.

Senator McElman: It was not a question, Mr. Chairman. I am simply pointing out that it is not just the health field in which the provinces are predominant; it is also the field of education, which represents a very large and important part in any study that might be undertaken. Again, the statistical information lies at the provincial level.

What we are talking about, I suggest, is preventive medicine in the field of criminology. We spend most of our money and human capability in this country, as others do, after the event, on the reaction to crime. We are not getting very far by simply throwing people into jails, or hanging them, or whatever. It is all reactionary. We have learned through medicine that the most important, rewarding and useful expenditures are those aimed at preventive medicine, and such expenditures, relative to the total expenditures in the field of health care, are minimal. The corrective measures in health care are really the expensive ones, as they are in criminology.

I support Senator McGrand fully in his desire finally to get started in Canada in this field, and perhaps we could be leaders. It may be that other have done significant work in this area. We do not seem to know. I support him fully in getting a start in this country on preventive criminology—and I emphasize the word "start"; it has to start somewhere. We should not continue to spend all our money in reaction, most of it uselessly.

It seems to me that Senator McGrand has pointed up one area that needs some research. There are sufficient signs now, based on studies about which he has informed us, both in our sessions and in the material he has fed to us, that events at birth do affect children, as well as events in their very early pre-school and school years. These events have a great deal to do with whether they become, at a later stage, criminals, as defined by society.

Whether we start with the possible effects of premature birth, or one of the other areas, there has to be a start in this whole area that can be initiated within the competence of Canada, with the cooperation of the provinces, which, of course, would be forthcoming, as a result of which this committee could recommend, not just to the Senate, but to the Department of National Health and Welfare or the Justice Department, or whoever, to point up that at least a minimal beginning be made in this whole area. Perhaps the witness would comment at this stage.

Senator Croll: I wonder if I might put a question to Senator McElman before the witness comments?

You are suggesting that, in view of what we have heard to date, some start be made by some competent body, whether it be from within the Department of Justice or the Department of National Health and Welfare, or jointly, and you are suggesting that the committee make a recommendation to that effect.

If that is your suggestion, I think you could get agreement of the committee. I think there would be general agreement in the committee to do that. In other words, we have to start some place and the obvious place would be the Department of National Health and Welfare. The idea is that we recommend to the Department of National Health and Welfare that they undertake this study. With that I agree, and I think the committee will.

Senator McGrand: That is what it is all about.

Senator Croll: That is not what it was all about, to begin with.

Senator Denis: There is a vast difference between this committee undertaking the study and recommending that the Department of National Health and Welfare undertake it.

Senator Croll: Senator McElman is suggesting that we ask the Department of National Health and Welfare to do it. That is the point. With that, I agree.

Senator McGrand: That is what it is all about.

Senator Croll: No, it isn't. There is a difference between this committee doing it and the Department of National Health and Welfare doing it.

Senator McGrand: The committee has to call in the experts.

Senator Croll: In any event, let's not argue. If that is what you want, I think we are in agreement.

Senator Norrie: I would like to step into this heated argument. To whom did you pass over your Poverty Committee, Senator Croll?

Senator Croll: There was no one, in any department, who could have dealt with it other than the Senate committee. There was no one in the department that had any knowledge in that area.

Senator Norrie: Well, they have no knowledge in this field either.

Senator Croll: Oh yes, there is a department full of researchers. We spend millions of dollars a year for this sort of thing.

Senator Norrie: I think we are talking at cross-purposes. I do not agree with you. What you say about going to the

Department of National Health and Welfare, I think, is a good idea, and I do not think anyone objects to it. I think we are capable of deciding on that and steering it into the right area. I do not think the provincial governments are going to object to this. I am quite sure they are all anxious to cooperate.

Senator McElman: They would welcome it.

Senator Norrie: Yes. As I understand it, there have been studies conducted in the United Kingdom, and perhaps in the United States and other countries.

Are you aware of the areas in which research has been carried out in this field, Dr. Banister?

Dr. Banister: I should emphasize that I have not made a formal search for recent work in this field—not because of a lack of interest, but mainly because I have a lot of administrative responsibilities which take me outside this area. I am certain there are additional data available.

If I might comment on the suggestion which came forward, I am wondering if your committee might not carry out a little more refinement and exploration of the problem before referring it to the Department of National Health and Welfare. I feel you might be in a position to bring together different people from different areas, which may be difficult for the health department to do.

Senator Norrie: Maybe you could steer us in a certain direction.

The Chairman: I think what you are saying, if I understand you, Dr. Banister, is that the committee could perform a useful service in bringing together experts in the field, who would define the problem a little more precisely and give us a better idea of the dimensions of the problem involved, and give us the type of information that would be relevant. Is that what you had in mind?

Dr. Banister: Yes, in a way. I feel that you still have lots you could do.

Senator Bonnell: Perhaps I could partially answer Senator Norrie's question. I had the privilege and honour to be in New Delhi, last November, when 35 Commonwealth nations met and discussed crime and violence in youth. It was one of the topics which a panel discussed, and it went on for two days. Most of these countries are very concerned about crime and violence, particularly in youth.

I do believe the United Kingdom and the Americans both have done some research in this field. I believe that a committee is to be set up in the Commonwealth Parliamentary Association to look into crime and violence in youth and report back to the next meeting, which will be in Marrakesh this September. It is known, I believe, as a new international social order, but they are to recommend to the Commonwealth.

Dr. McGrand's proposal here to the Senate is apropos because of what has been going on in every country in the Commonwealth during the last year, particularly, in Great Britain, and also in the United States. I am not too sure whether it is involved in the uteri, or before-birth type of thing, but I believe they are more involved with the causes of crime—whether it be poverty, affluence, unemployment, or whether it be breakup in the family home, or whether it be many many other things that seem to be the cause in different countries.

I do not believe that any one country knows all the answers, nor that any one group of people knows all the answers, but I do believe there is room for research. In light of the fact that representatives from the Senate will be attending the conference in Marrakesh in September, we will be able to report back on what we should be doing here in Canada with reference to violence and crime among youth.

Therefore, I would like to support Dr. McGrand's viewpoint that something be done. I think we should take Dr. Banister's recommendations and bring in more witnesses to our committee before any final decision is made. I do believe it is only experts like himself, in other areas such as crime, justice, health and so on, who can really give us the type of information we need to form a strong basic opinion upon which to go forward.

Senator McElman: Senator Bonnell has raised an interesting dimension here. If the studies are to be undertaken, particularly within the Commonwealth countries, perhaps this would be an area of study for us within that global program. No one country can, in a short period of time, study the whole picture with all its ramifications. Perhaps this is an area of study, within the structure Senator Bonnell speaks of, that Canada could offer to undertake, as its contribution to this broader study. I am sure it would be useful in the international context. It could be funded; it would be funded; it would become a high priority. We know that with respect to the budgeting which takes place, not only in our country but others, things that are important get shuffled off because of lesser priorities placed upon them within a departmental picture rather than the larger picture. Perhaps you have hit the very thing we need so desperately, at this point.

The second point I would make is that Dr. Banister has suggested that much more information should be gathered before we reach a final conclusion, and report. Obviously one of those areas would be Statistics Canada. I think we have got to find out from Statistics Canada what sort of information they are gathering. If there are holes in that information that are not being covered, in looking to the future—not to our present situation, but looking to the future—perhaps we could convince Statistics Canada that there is information which should now be gathered in this field so that we can develop a body of data so that effective follow-up can take place. Perhaps we can fill in holes for Statistics Canada they have not realized exist in their current gathering machinery. I would recommend to the committee that Statistics Canada be one of the groups they gather some information from very quickly.

Excuse me for taking so much time, particularly as I am not a member of your committee.

The Chairman: Are there any more questions of Dr. Banister?

Senator McGrand: I would just like to make one small statement. I return to what they say about, "Hang them!" 80 per cent of people, when they come across blind people, or the half blind, or two-thirds blind, say, "Give them all the treatment they need! Salvage them!" If we see someone who is deaf and dumb we say, "Give them lots of treatment!"; and even for the autistic child. But the little fellow who has a blemish that makes him a potential killer, he receives no sympathy, anywhere. 80 per cent say, "He is no good; hang him! Hang him when he is only five years of age!" Now, that is the thing we have got to break down.

Senator Norrie: I do not know if you have read this magazine. There is a part in it entitled "Young and in Trouble." It is enough to make your hair curl; it is just awful. I believe we should try to do something to overcome this situation. I am fully supporting Senator McGrand in making a start.

The Chairman: Honourable senators, the immediate question before us is: Shall we call more witnesses? I would like to get the opinion of the committee on that; and, if so, what witnesses we should call. I had hoped that we could wind this matter up today. I had developed a draft report which I have circulated only to the steering committee, but there is no point in dealing with the draft report if we are going to have more witnesses.

Senator Smith (Queens-Shelburne): I have been sitting back thinking very deeply about some of these problems. I was quite impressed with some of the statements made by Dr. Banister. It seems that in each succeeding meeting we have we get a fresh point of view; we get fresh information. I believe there is a rich field yet for us to plough up and see what is underneath, where the old crop was. We could use more information upon which to base our decision, when we finally reach that stage, in this committee.

I can see that it is going to be very difficult for us to look in depth into this subject matter, but I feel we are really capable of pulling off an inquiry that will involve research of all kinds of technical knowledge on this subject matter. However, I do think we need some further information. I am strongly in favour, after consultation with some of the others who have appeared before us and certainly with Dr. Banister, of finding out just who those people are. Statistics Canada has been mentioned. Let us see what they have got, and I think we will be playing an important role in whatever research is undertaken. I am convinced that Dr. McGrand has already done a great service by initiating this part of the discussion. I am becoming more interested in it all the time. I thank him for it, as much as I do Dr. Banister and all the others. I am in favour of our going on a little further before reaching any final conclusions.

Senator McGrand: Why not bring in Dr. Warme, Dr. Barry Boyd? I say that we should not bite off too much at one time. Bring in one or two or three of these people, and let us see where we are going from there.

The Chairman: The only problem, Senator McGrand, is that we are working within a diminishing time frame. We are coming up against the problem of whether we can get a report in before this session ends. If we do not establish a time for the work to start, before the session ends, or somehow arrange for it to be carried on into the next session, we will have to start from scratch again; because

the whole thing will die on the Order Paper. This is the problem with respect to witnesses. I am in the committee's hands.

Senator Croll: You can deal with it very easily, Mr. Chairman. On the day before we adjourn you move that the matter be proceeded with at the next session. If the motion is passed, you proceed with it *ab initio* in the next session. That is the thing to do; there is no problem. In any event, one of the things that has cropped up here that is rather important is that Statistics Canada know what we are talking about. Aside from what all the experts tell us, we have to take a look at some of the statistics, so let us collect information and then ask that the committee be reconvened. That will be granted automatically, at our request; and that is it.

The Chairman: Is everybody agreed that we call further witnesses?

Hon. Senators: Agreed.

The Chairman: Are there any more questions for Dr. Banister?

If not, before we disperse, I would like to mention that Senator McGrand submitted a summary of briefs, letters and submissions that he received, and these were circulated to members of the committee. Do any members have questions to raise on that material?

Senator Smith (Queens-Shelburne): I wonder, Mr. Chairman, if it would be useful to have this material incorporated in our report.

The Chairman: Yes. I have been wondering about that. I do not think, for people who really want to study our report and our proceedings, that the summary would be very useful; I think we would have to have the whole text printed.

Senator Bourget: I agree with you. I move that we put the whole thing in.

Senator Bonnell: I agree. It should be put in as an appendix to the proceedings.

The Chairman: To today's proceedings?

Senator Bourget: Yes.

Hon. Senators: Agreed.

(For text of material, see page 15:13)

The Chairman: Thank you, Dr. Banister. You have been very helpful.

The committee adjourned.

APPENDIX "1"

Ministry of health
Mental Health Centre—705/549-7431
Penetanguishene, Ontario L0K 1P0

March 8, 1976

Senator Fred A. McGrand,
The Senate,
Parliament Buildings,
OTTAWA.

Dear Senator:

Thank you very much for sending me your material in regard to the proposed bill.

I feel very strongly that we must have a great deal more research into the causes and prevention of violent crime. We have the distinct impression that much of it is caused from social factors very early in life.

Good luck with your bill.

Yours sincerely,

B. A. Boyd, M.D., F.R.C.P.[C]
Medical Director

APPENDIX "2"

BRACEBRIDGE COMMUNITY MENTAL HEALTH SERVICE

Riverside Centre, Bracebridge, Ontario—P0B 1C0

March 17, 1976

The Honourable Fred A. McGrand,
Senator,
The Senate,
Ottawa, Ontario.

Dear Senator McGrand:

I have read your address to the Senate concerning the need for study of the causes of crime. Your observations reflect a keen interest in the problem which is a complex multidisciplinary one spanning such professions as law, sociology, penology, psychiatry, psychology and education. There is no common etiology of crime but rather multifactoral influences. To use the example of the boy with problems at age six who becomes a dangerous psychopath at age 26, it is probable that the etiology is established at 6 and perhaps without vigorous and socially unpalatable infringement on his rights, will show the pattern of behaviour at age 26. His size increase, geographic mobility etc. reflect the same problem at six in a different way rather than an exacerbation or developmental process of the problem at six.

Another questionable belief is that criminals are mentally disordered. Some mentally disordered persons do commit crime but not all criminals are mentally disordered. There are a number of persons who suffer cultural deprivation, who have varying degrees of intellectual incompetence, who are maladjusted and unhappy and who are resistant to most voluntary participatory forms of therapy. Attempts to limit the influence of such persons on society are viewed as infringements on their rights unless a crime has been committed. Any attempt to limit their influence and modify their behaviour after a crime has been committed is viewed as punitive and currently receives considerable condemnation. Treating a mental illness, even a psychosis, does not necessarily modify antisocial or violent behaviour. The treatment of violent behaviour often requires the segregation of the individual to protect both society and himself. Attempts to modify the behaviour will usually be regarded as unpleasant since they interfere with the person's desire to be violent. Such interference will be loudly protested by the offender and any he can enlist to support him.

The child is often angered and frustrated when a parent stops him from entering a busy thoroughfare. Perhaps such repeated attempts to enter the street are met with unpleasant consequences including removal to a room in the house, a slap on the bottom etc. It is rather difficult to apply these techniques to a twenty year old person who behaves with the irresponsibility of the child, consequently jails are used to segregate indeed sometimes solitary confinement. Often misguided persons strive to prematurely release the person before appropriate behaviour retraining has occurred. We teach trades etc. not behaviour with the result that most rehabilitation programmes are a dismal failure (see American Psychiatric Association News February 1976). Currently an increasing number of persons are concerned with prohibiting treatment plans that are contrary with the wishes of the offender—that I believe is the ultimate in therapeutic futility.

Until we can assure the public and law enforcement bodies that violent individuals will be modified or not released until they are then I suspect the demand for capital punishment will increase in volume and breadth. Regardless of the undesirable aspects of capital punishment, it has one virtue that is unique. The offender, beyond any doubt, will not repeat the offence. This has a certain attraction to an apprehensive or terrorized society who has become disenchanted with the sympathy extended to the offender and indifference shown to the victim.

There is a considerable body of knowledge of how to deal with criminals both locally and internationally. The causes of crime have been studied but the measures of prevention are an extremely complicated sociological issue.

I strongly urge your committee to enter into a dialogue with committees of Canadian Psychiatric Association who have given much study to the problem and are a well informed body. Dr. R. E. Turner, Associate Director Medical, Clarke Institute of Psychiatry has achieved international acclaim within and outside of his profession. He would be an appropriate person to establish liaison between your committee and the C.P.A. I believe this course will be the most economical and propitious course to follow.

I hope this letter assists you in your worthy endeavours and if I can be of any assistance I shall be most honoured to serve.

Yours sincerely,

R. E. Stokes, M.D., D. Psych., F.R.C.P. (C).,

APPENDIX "3"

The National Association for the Advancement of Humane Education

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UNIVERSITY OF TULSA
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March 31, 1976

F. A. McGrand
The Senate-Canada
Ottawa, Ontario K1A 0A4
Canada

Dear Senator McGrand,

For a long time humanitarians have felt that humane education could counteract crime. Unfortunately, to date very little research has been done in this area. However, studies do have a bearing on the subject. J. MacDonald ("The Threat To Kill," *American Journal of Psychiatry*, 120: 125-130, 1963) and Daniel S. Hellman M.D. and Nathan Blackman M.D. ("Eneuresis, Firesetting and Cruelty to Animals: A Triad Predictive of Adult Crime", *American Journal of Psychiatry*, 122:1431-1435, 1966) have documented cruelty to animals by children as being a positive factor in forecasting adult criminal violence. These two studies could form a solid base for any argument relating attitudes to animals to attitudes toward mankind and all that lives.

May I also refer you to the article in the Fall 1975 NAAHE JOURNAL (enclosed) by Delma Sala Fleming (p. 11) "Cruelty to Animals as Predictive of Psychopathologic Behavior." In the article, Ms. Fleming refers to three murders which were unusually cruel and violent. In all three cases, the persons responsible for the murders were also found to have committed acts of cruelty to animals early in childhood.

If one can apply logic at this point, one can assume that if cruelty to animals in childhood is predictive of future criminality, children who are taught the concept of humaneness will be less likely to commit crimes of violence as adults.

It should also be considered that those of us who promote the teaching of humane education in schools feel quite strongly that children taught humaneness toward animals will transfer the attitude of humaneness to humans. Dr. Boris Levinson (*Pet Oriented Child Psychotherapy*, 1969, Charles C. Thomas, Springfield) states, however, that in order for the transfer to take place, we must teach for it. Therefore, if humane education is to affect the incidence of crime, we must treat the concept of humaneness in its broad definition which states that it is a balanced sensitivity toward all that lives. If this is indeed what we mean when we refer to humaneness, then humane education should logically be a very important factor in the reduction of crime.

In regard to the need for additional research in the area, we do have a sufficient rationale for numerous hypotheses for research on the relationship between crime and the

attitude of humaneness. The facts that very little has been done, that the few studies we do have suggest the need for research in the area, and that so many people feel so strongly that such a relationship exists certainly should be sufficient to encourage the actual implementation of such research). If through such research it can be proven that humane education can effectively reduce criminal violence, the importance of humane education has been established.

I hope I have responded to your letter in a manner that will be helpful to you. I regret that we do not have more

complete data to give you, but there has been a reluctance on the part of psychologists to recognize the role that animals play in all our lives. Recently, however, there has been renewed interest and I think we will begin to see more research along these lines.

If you have any questions, please let me know.

Sincerely,

Eileen S. Whitlock

APPENDIX "4"

Clarke Institute of Psychiatry, 250 College Street, Toronto,
M5T 1R8

April 6th, 1976

Senator F. A. McGrand
The Senate
Ottawa, Ontario K1A 0A4

Dear Senator McGrand:

I wish to thank you for the telephone conversation, for your letter of March 17th and the enclosures. I read the enclosed material with great interest.

In brief, I would very highly support the need and value of a Senate-sponsored multi-disciplinary committee to investigate the area of crime in Canada. As you indicate, such will inevitably also touch on mental and emotional disorders.

Although it would be hard to document all the reasons for this, it is my belief and I think it is shared by many that there is a real sense of urgency that we must at least attempt to do concrete things about these problems in a way that we have not tried before. In brief, one senses that time may be running out for us. Perhaps we have only some five to ten years to work with.

I would highly support the multi-disciplinary concept of the committee as you suggest and that it would have a wider range of disciplines than frequently is the case. Such might include beyond the usual members a historian, an ethologist, an anthropologist, etc. as you suggest.

It is very evident from your speeches that you have done extensive reading and research on the matter.

If I may, I would like to briefly elaborate some of the reasons and some of the personal concerns which lead me to support the development of a Canadian committee.

1. It is my understanding that Canada is using incarceration and massive intervention in persons' lives more than any country in the Western World. I am not aware of any proof that this intervention is, in fact, achieving better outcomes in terms of prevention of initial crime or of recidivism. However, the costs in terms of money, of personnel and human destruction are massive. For whatever reason, it would seem that the Scandinavian countries are able to achieve similar or better results using two years of incarceration as the near upper limit of their incarceration and six months as a much more average sentence.
2. It is very evident that we are coming up against the limits of our financial and personnel resources with the consequence that we must establish priorities for the deployment of these resources in a systematized and organized way that has not been the case before. If at all possible, it would be important to not "crash" into the end points of these resources as we have recently done with energy.
3. Although others can speak much more learnedly about this particular matter, many of us are very concerned about the translation of findings and causes and, in fact, management that has been assessed in other countries even though such countries would seemingly have at least a superficial resemblance to ourselves. Such would include the translation of results from the United States, the United Kingdom, and Scandinavian

countries. One only learns later that there were very special people involved in the programs and in the causes and then one cannot directly transfer such to Canada with its specific mix of population, size of country, economic base, etc. This speaks all the more for uniquely Canadian committee and assessment.

4. It would seem that both in psychiatry and in corrections genuinely good ideas turn into what might be called "management by slogan". Furthermore, well-monitored and well-evaluated projects, whole systems get changed across the country. In the newness and in the enthusiasm, the application swings well past the optimal point. A relatively recent effect in psychiatry has been "the open door policy". Although this did much to benefit mental hospitals, it would seem to have now been over applied. With corrections, possible examples might include temporary absence, indiscriminate bail and living unit concepts in maximum security prisons.

There would seem much merit rather committing whole systems that small pilot projects with well established base data, adequate monitoring followed by evaluation would have great place at reduced costs before committing systems to the current theory or fad.

5. We must keep trying by the means of the above small pilot projects to enter into prevention. It is clear in psychiatry that we will simply never have enough personnel to even become the necessary "listeners" in our society as it is currently constituted, let alone deal with the frankly, emotionally and mentally disordered. Perhaps I have become over simple, but I would very much like to see programs started in a small area accumulating all the knowledge we have at present about the very fundamental facts of what it is like to be a man, to be a woman, to be married and to be a parent. We would also seem to need to develop trial projects in the handling of leisure time.
6. I have been repeatedly impressed of the conflict which exists at times in the judge's mind and certainly in the correctional system. I really come to question whether it is even possible in any adequate way to combine the dual roles of punishment and rehabilitation. At least, in recent times in a psychiatric field, we have had a clear mandate which would go something like this: cure if you can, improve if that is all you can do, and incarcerate only if you must. It would be of great interest to see correctional programs develop consistently on the theory and purpose of rehabilitation *only*, as a small pilot project.
7. I am of the opinion for the reasons noted above that there is an urgent need for such a committee in Canada and that the Senate would be a very appropriate sponsoring body. Even if it would be short-lived, it would be of value. However, I would like to suggest that great dividend would be achieved if a committee could be formed which would be of great duration such as two or three generations, to have members replaced as need be but somehow the continuity of purpose, pilot project and the ongoing collection of data would be of immense value. All too frequently committees seem to form tackling problems the solution of which are bound to vastly outlive the duration of possible solutions.

I hope you will forgive my making the above rather personal comments.

Yours sincerely,

I would very much appreciate a brief note at sometime as to how your project develops.

C. K. McKnight, M.D.
Chief of Service, Forensic

APPENDIX "5"

Clarke Institute of Psychiatry, 250 College Street, Toronto,
M5T 1R8

April 6th, 1976.

Senator Frederick A. McGrand
The Senate of Canada
Ottawa, Ontario K1A 0A4

Dear Senator McGrand:

We know that you have been concerned about the causes of violence for many years. In this regard, Walter Menninger has sent us the Final Report of the National Commission on the Causes and Prevention of Violence (1969) and has also sent us nine volumes of Task Force Reports that were used in the final report. Almost without exception, the factors which are considered are the social factors that contribute to violent behaviour in human beings. Virtually no attention is paid to the individual and personality factors that play a role in violent behaviour. This, despite the fact that we all know well that violent individuals tend to be disturbed individuals. The recent film "Taxi Driver" studies the behaviour of an unstable individual in an unstable society. Why is it that we all too often ignore the "unstable individual" and concentrate our attention on the unstable society?

We acknowledge that unstable violent persons may well have constitutional vulnerabilities which lead to abnormal development, but we must also acknowledge important individual developmental factors that contribute to adult violent behaviours. It is unfortunate that we have an enormous amount of knowledge about individual factors and yet make little use of them. We would mention some of the research knowledge available.

Chess and her associates (1967) have written eloquently on the basic temperament of children when they are born. She emphasizes the fact that the interaction of the child's temperament and the parenting behaviours it receives are crucial in the personality style that individuals eventually adopt. It is amazing to note how few people are aware of this work and how few people are aware of the well-known at-risk combinations of children and parents that can be identified and ameliorated.

In recent years, Klaus (1972) and others have demonstrated the crucial importance of the earliest hours, days and weeks of life. He has demonstrated that mothers are deprived by not contacting their infants during the first hour of life and that this affects the future maternal behaviour for many months and in fact his studies now have gone on long enough that behavioural changes are still demonstrable five years later. He has demonstrated that certain mothers may not be able to develop normal relationships with their children without this contact during the first hour of life, with dire consequences for the future development of that child.

Margaret Mahler (1975) has been conducting careful observations of children in New York City for many years. In these studies she feels able to predict the development of personality disorders before the age of two years, such personality disorders including the violent individuals here in question.

We might also remind you of some much earlier work by Rene Spitz (1945, 1946) in which he first drew our atten-

tion to the grossly disturbing effects of abnormal rearing practices. In these papers he studied children reared in institutions and showed that after three years 37% of the children had died and the remainder were grossly retarded in the social, intellectual and physical spheres. This work demonstrates the impact of abnormal environments on infants and to us drives home the importance of studying child rearing and parenting much more thoroughly than we have until now.

Two of us (Acheson and Warme) have studied a few cases of violent individuals (unpublished) in which we were able to dramatically demonstrate the grossly deviant family functioning that led to the abnormal behaviour. Because the individuals are easily identifiable, this material cannot be discussed publicly, but the information is available to us and clearly demonstrates the pathogenic effects of abnormal families.

Bowlby (1961) has written for many years about the consequences of separation and parental loss for the psychological development of children. His influential papers have changed many of our practices and have led to more sophisticated interventions with regard to children who have experienced losses. Nevertheless, we still subject hundreds of thousands of children to abnormal environments and to repeated separations because we do not have the courage of our convictions, that is, because we are not yet able or willing to apply what we know. We refer to those children who live in abnormal homes, are placed in foster homes and then live in a succession of temporary placements, none of which truly invests itself in the children and from whom the child must repeatedly separate without the assistance that we know to be so vital.

All these research efforts are preliminary. We know the devastating effect that improper parenting can have on children, but we do not yet know the details of this. More important is the fact that we do not seem able to implement the knowledge that we have. Thus, implementation may be the greatest problem of all and requires study. The research involved is expensive and time consuming and must be done on "normal" populations. In other words, it cannot be done as part of clinical work, but rather must be more pure research which is always difficult to fund and difficult to justify. Nevertheless this is what is required. There seems to be a stubborn reluctance to know about such matters and to deal with such matters, perhaps because these things are too close to home for most of us. Someone once said that there is not a crime that any of us cannot imagine committing ourselves. Perhaps the roots of our own violence are something that we do not care to know about.

"One other thing requires research. This is the issue of the prediction of violence. An individual who has regularly been violent in the past can be predicted to behave violently in the future. But we do not know how to predict violence in persons who have behaved well heretofore, nor do we know how to predict violence in an individual who has only committed one violent act. We know that most of the latter group will never be violent again. There are a number of research strategies that could be undertaken, but not without funds."

And finally a word about treatment. Many children who are developing abnormal personalities come to the atten-

tion of psychiatrists. Very few of our psychiatric settings are organized so that these children can receive the long-term treatment that they require. Most flit from setting to setting receiving brief interventions because of the pressure of work. Any lay person knows that the alteration of the personality requires long arduous work—consider what difficulty we supposedly normal people have in changing ourselves.

We hope that these comments will be of value to you and should you wish to discuss this further, please let us know.

For your information, please find enclosed two position papers from the Ontario Psychiatric Association Subcommittee on Child Psychiatry and an article by Lois B. Murphy.

Yours sincerely,

Gordon E. Warne, M.D., F.R.C.P.(C)
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Enclosures—Reference List. O.P.A. Position Papers (2).
Article by L.B. Murphy

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ADDENDUM "1"

Reprinted from PREVENTION OF MENTAL DISORDERS
IN CHILDREN.

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PREVENTIVE IMPLICATIONS OF DEVELOPMENT IN
THE PRESCHOOL YEARS*

LOIS BARCLAY MURPHY.

By "an emotionally disturbed child" we mean a child whose emotional response to the stresses and crises of his life disrupts his growth and distorts the development of relationships with his environment necessary for further growth. There is a difference here between emotional disturbance or mental disorder in a child and that in an adult: the adult, in the process of achieving enough adulthood to manage himself outside of an institution, has reached some minimum of physical, mental, emotional maturity. With him, mental disorder consists in disintegrative reactions or loss of the level of mental and emotional integration achieved up to the point of illness; recovery is to a large degree a return to a level already achieved.

*Based on findings from The Coping Project, supported by The Menninger Foundation and U.S.P.H.S. Grant M-680.

In a child, physical illness and emotional disturbance threaten to, or actually do, interfere with the process of growth itself, and are expressed in distortions or blocks in development. The zones of development most seriously blocked or distorted by disintegrative reactions to extreme stress or crisis are apt to be those whose maturation is still incomplete, or the most recently acquired functions (Freud (3), Erikson (1)) and the zones dynamically related to them. But the *entire* area of mental illness in a child has to be looked at in developmental terms; how does this reaction to stress or crisis affect the motor, cognitive, affective integrations that are of special importance to a child of this age, and to a child of this temperamental style? For this reason, workers with children need a thorough knowledge of developmental processes and sequences, and also the wide range of individual differences within an over-all outline of developmental sequences through which children move in the process of growing up—in physical, mental, and emotional (including psychosexual) areas. We cannot in one brief chapter review the details of these sequences which have been outlined elsewhere (13). We shall deal with general underlying problems of vulnerability and factors related to it.

Before going further, we need to pause briefly to explain the way in which we use the terms stress and crisis. "Stress" refers to outer or inner conditions or both that (1) make demands on the child beyond his capacity to handle with his usual resources and (2) arouse anxiety that he will not be able to deal with the threat. Either he develops a new solution in order to manage the stress or he protects himself by some way of minimizing or distancing himself from it; or, if he remains in the situation and is not able to manage it or avoid it, he is likely to regress to a poorer level of integration, showing disintegrative reactions to stress (10). Stress may be temporary or prolonged, mild or severe, simply or complexly determined; above all it is a matter of thresholds of the individual organism and of the meaning of a given situation to the individual child. This subjective and interactional aspect of stress sometimes leads people to avoid the term because of the ambiguity involved in these complexities. We can handle this most simply by referring to "stressful experiences," thus making

clear the fact that we are primarily concerned with the stress as felt by the child.

"Crisis" as ordinarily used refers to a more severe ("critical") or sudden or overwhelming stressful experience, with greater disintegrative danger. Many infants, for instance, have stressful experiences as new foods are presented, but we do not usually find there to be crises, weaning from the breast need not always involve a crisis but may do so when the infant is not prepared for it by adequate familiarization with other satisfying feeding methods and adequate continuity with the mother's lap and experiences of being held. Developmental blocks and distortions arise both from crises and from long-continued stress.

We know from many longitudinal studies that virtually all children go through both stressful periods and crises during their growing up; and that by and large children find ways of handling these. Their reactions and efforts include problem behavior that typically reaches peaks at the age of five to six years and in the prepubertal period (9). It is not possible or desirable to think of prevention in terms of avoiding all stressful experiences or all crises, since growing up includes developing the capacity to cope with stress and crises. We can thus think of "normal expectable stresses of childhood in our culture." We can also think of a continuum of specific sensitivities, intrapsychic vulnerability, and over-all vulnerability to different normal or unusual stress experiences and crises in different children.

Differences in intensity of gratification associated with an object lost, differences in capacity to use substitutes, differences in insight into the event are among the many factors within the infant or child that affect the degree of stress felt in experiences of loss, for instance. Individual differences in coping resources and resilience within the child, as well as differences in support from the environment, help to determine which children can weather these stresses sufficiently to permit continued growth, and can develop increasing capacity to reach workable relationships with the environment. As Grace Heider (4) has shown, the over-all vulnerability of the child is a resultant of both external and internal, positive and negative factors. The task of primary prevention includes strengthening positive resources for coping with stress as well as reducing excessive dangers, whether of pain, disease, anxiety, prolonged deprivation, frustration, or sudden loss.

Children differ from adults in that they are typically in situations that they had no part in choosing and cannot choose to change. At the same time they come into these situations with their own unique needs, drives, talents, and capacities to stimulate, irritate, exhaust, or inspire the people of their environment. Our knowledge of individuality is still incomplete but it is sufficient to justify the assumption of a continuum or wide distribution curve along every dimension of capacities, drives, and vulnerabilities characteristic of the human organism. As Roger Williams (15) pointed out, a person average in all ways is almost nonexistent; everyone is deviant in some respects. These differences contribute to the degree of proneness to emotional disturbance and the capacity to handle stress, and need to be understood as basic to the development of concepts of primary prevention and programs for working at prevention of mental illness in children.

It is to be noted that primary prevention has both positive and negative aspects. We talk about how we can prevent something bad and how we can keep something

bad from getting worse; it is also possible to talk about prevention of mental disorder in terms of learning how to maintain something good, how to support and develop ego strength, how to sustain integration. This is part of what we are trying to find out, in our studies of children we call normal.

We often talk about what adults can do to the baby or for him; it is also possible to learn about what an infant and child can do for himself, his own selecting, fending off, delaying, timing efforts. Learning to appreciate and to support these is part of the positive approach to prevention.

We generally assume that bad produces bad or eliminating it just gets rid of it. But when we look further we find creative or new good consequences of coping with stress and crisis: "triumph" and "mastery" of stress can produce optimism and greater capacity for struggle and mastery.

Learning to Study Children's Ways of Handling Stress

We tend to assume that we know what is healthful; but some important points can receive only a question mark at present. We are just beginning to learn how to distinguish between withdrawal as a healthy strategy of a sensitive child and withdrawal as an unhealthy style of adaptation that produces dangerous alienation from people. Part of primary prevention is learning to respect the child's ways of coping with life, and to judge the longtime results not just the method of the moment.

Thus children who progress in weathering the stresses and crises of development have as much to teach us about primary prevention of emotional disturbances in childhood as do children whose development is interrupted or who become impossible to live with. In our study of thirty-one children who were observed during infancy by Drs. Escalona and Leitch (2), we focus on the delineation of the child's ways of dealing with everyday difficulties, demands, and stresses and the over-all picture of the positive and negative factors contributing to his capacity to maintain his integration. While we are concerned with major crises such as those created by severe illnesses or by the cumulative effects of qualitatively different stressful experiences within a short time, we do not confine ourselves to these. Rather, we turn our microscope on the careful delineation of disintegrative reactions to stress, such as some young children experience when they are examined by a strange doctor or are expected to meet the demands of an intelligence test or respond to the provocations of a psychiatrist or move from one home or one city to another. From detailed records of disintegrative reactions to relatively mild stress together with the positive efforts made by the child to handle the stress of the situation and to master his stress, we formulated a repertory of stress reactions and coping resources that can be studied in relation to a wide range of factors contributing to both. We are as much interested in learning how to support a child's capacity to handle the slings and arrows of outrageous fortune as we are in the problem of bringing the freight of external trouble within manageable limits.

In making observations on the child's way of handling life, we discriminate between two kinds of coping: (1) We are interested in the child's capacity to make use of the opportunities, challenges, and resources of the environment and to manage the pain, frustration, difficulties, and failures with which he is confronted. (2) The child's capacity to maintain internal integration and his resilience or potential for recovery after a period of disintegrative

response to stress are also of basic importance and involve additional factors as well. Ways of dealing with the small but incessantly repeated everyday stresses involved in the petty interruptions, conflicts, and defeats of daily life related to the first point may be as important as the ways of handling the more dramatic or unhappy acts of fate that are implied by the term "crisis." What a baby does when it is overstimulated or when it is desperately hungry or when it is constantly and rudely interrupted in the process of feeding, and the residues of expectancy emerging from these basic experiences contribute to the development of styles of coping that influence both the thresholds for disturbance at times of crisis such as weaning or separation from the mother, and also the kinds of resources the child brings to coping with crisis. We want to look at both the factors that contribute to different forms of vulnerability, the factors that contribute to the child's resources for coping with everyday stress and with crises, and his capacity to maintain internal integration: that is, to continue to make developmental progress with an adequate degree of mental health. The more we understand these, the better foundation we will have for prevention work.

Internal Integration as Dependent on the Interaction of Many Factors

We can view emotional disturbance of various degrees, including the severe forms of mental disorder in childhood, as an expression of interaction between the child's thresholds for response to, needs for, and vulnerability to external stimuli of every sort, and the range, intensity, tempo of the external stimuli. Disturbances arise either from too little or too much, too soon or too late, in relation to the needs or demands, limits, and tempo of the individual child. The latter are constantly changing with developmental changes, and the residues of gratifications, frustrations, and conflicts left from preceding sequences of experience. Seen in these dynamic biosocial terms and at different levels of depth, prevention of mental disorder in childhood has to concern itself with the total range of inner and outer factors and their interactions, especially in relation to developmental vulnerabilities and areas prone to disintegrative reactions and also to conflicts that sensitize particular zones of functioning under extra stress or at times of crisis.

We also deal with both inner and external factors in the maintenance of internal integration and in the difficulties in maintaining integration; factors that need to be appreciated if prevention is to be effective. In preventing physiologic difficulties we know, for instance that iron requires the presence of copper for adequate utilization. Equivalent interactions can be studied on the psychologic level. The best mother in the world cannot guarantee smooth nursing if she happens to have difficult nipples, or a passive baby with little appetite, any more than a large breast and a hungry baby can guarantee a serene nursing experience if the mother hates babies.

A first step in planning preventive measures is to discover controllable factors in vulnerability and for this we need to look at many factors related to vulnerability. In a pilot study I found that a total vulnerability score based on presence or absence of the following elements showed significant negative correlations both with the capacity to maintain internal integration and with the capacity to handle challenges, frustrations, failures, and opportunities in the environment; these variables related to over-all vulnerability grouped themselves under the following categories:

1. Disintegrative tendencies: this included tendencies to show disintegrative reactions to stress in the motor, speech areas, etc. These disintegrative tendencies have to be seen as resultants of congenital or developmental weaknesses inherent in structural limitations or damages, as augmented by over- or under-stimulation or other inadequacies of the infant's experience. Prevention of the former (barring controlled breeding) involves comprehensive measures guaranteeing optimal pregnancy, birth, and neonatal development.

2. Impulsiveness, difficulties in control, etc., are related to the above, with similar factors involved.

3. Tendencies to be irritable, demanding, aggressive, antagonistic.

4. Fatiguability, giving up easily. All the factors of innate energy level as affected by metabolic and endocrine processes, nutrition, psychic orientation, emotional response are involved here.

5. Fears and anxieties are resultants both of innate thresholds, multiple conditioning, conflicts, and residues of previous inadequate coping efforts.

6. Tensions and conflicts still in the process of active struggle, still available to the child's efforts at resolution and to help from outside.

7. Difficulties with peers are resultants of all the above, but continue to act as contributing factors in further stress.

8. Difficulties with mother, family, and environment are both primary factors in stress and resultants of unmastered problems that contribute to further difficulties.

This last group includes background factors observed in infancy when the children were studied by Escalona and Leitch.* Although we did not have any mothers in the group who could be called rejecting mothers—really rejecting mothers would probably never cooperate for ten years with a project of this sort—there were strains between mother and child in certain instances, where the mother had a child who seemed hard to understand, who was odd or different from the rest of the family, whose sex was not the one wanted, or who was simply temperamentally incompatible with the personality makeup of the mother. In two such instances there was an extremely gentle, tender mother with a very bouncing, vigorous, active baby boy who needed more stimulating contact than this gentle mother could give; in another instance we had pretty much the reverse picture: an extremely sensitive boy with a devoted but rather rugged and vigorous mother whose handling was not naturally well adapted to the needs of such a sensitive baby.

*As analyzed by Grace Heider, op. cit.

Internal Factors in Vulnerability

Although our group was screened to exclude defects and other kinds of congenital and birth hazards as far as it could be, a factor that has loomed rather large as contributing to difficulties in maintaining integration is *developmental imbalance*. Actually, a relatively small proportion of the children have been growing at an even rate. In infancy, a child may be perceptually very acute and very sensitive and in this way far ahead of let us say, his visual-motor coordination and his ability to handle things, or his *intake* is ahead of his ability to integrate; he is confronted with

intrinsic problems of coping with stimulation from the environment.

If the pattern of deviations produces intraorganismic imbalances, a child may have a constant inner source of tension or stress. In our normal sample in Topeka there are children like the following: a boy of strong drives and poor ability to control and integrate impulses; a boy of strong intellectual interests and limited intellectual abilities; a boy of great motor energy and poor coordination; a boy of strong visual interests and limited vision; a child who is advanced in all areas except speech so that his explorations and ideas outrun his ability to communicate or even to formulate his concepts clearly. These *imbalances constitute primary sources of difficulty* that can be helped, insofar as pediatricians and mothers and other people in contact with the baby can see the things that pile up the tension and stress for him.

We cannot go into all the nuances of sensory, motor, and affective differences, but each baby is highly individual and the problem of the way in which the baby integrates his idiosyncratic range of resources is particularly important in relation to maintaining mental health.

The group "disintegrative tendencies" is based on ratings of specific disintegrative reactions to stress at the preschool level and the ratings of disintegrative reactions to stress also in infancy. Here we are including constitutional tendencies toward breakdown in one or another functional area of the organism, some children showing loss of motor coordination, others perceptual distortions, others speech disturbances, others loss of contact with the environment, etc., via marked withdrawal of attention. Disturbances of motility, autonomic reactions, withdrawal tendencies, etc., could all be observed in infancy as well as later. Impulsiveness and difficulties in control are often closely related to constitutional tendencies, since even in infancy ease of control versus impulsiveness was easily observable; however, these tendencies are greatly modified as the child develops. Defensive, demanding, aggressive reactions can be seen in relation to irritability during infancy, and to other early evidences of tendencies toward hostile and aggressive reactions.

Going beyond our sample of normal children to those we see in the Children's Division of The Menninger Foundation: when there is some degree of organic deficit, damage, or disease, the child's integration is further threatened in various ways. His resources for control of impulses or for insight and understanding or for absorbing and integrating stresses or trauma are limited; if the organic damage is slight, vague, diffuse, difficult to diagnose, it is often not recognized and he is subjected to demands he cannot possibly meet, is misunderstood, and considered wilful; still further, his failures are frustrating and anxiety-provoking to his family, whose anxiety reinforces and augments his own. He lacks the resources ordinarily contributing to resilience and recovery: he cannot surmount trauma and conflict adequately alone as normal children often do through comforting *gratifications*, focusing on their *skills* or *strengths*, through play, fantasy, and the like. If, as in a smaller percentage of instances, the child had a thoroughly *bad start* as an infant, with colic and other gastrointestinal difficulties for the first six months or so of life when the baby is ordinarily establishing his basic sense of goodness within and without, he may lack all foundation for trust in life, in help from others, or his own potentialities. These are the children who are most unreachable, especially

when such a fundamentally bad start goes along with evidences of persistent uncompensated organic damage.

Now for the others in our *normal* group who do not have any obvious intrinsic disharmonies of equipment or between equipment and drive: here we often find that individual stressful experiences have come too fast or frequently for the child to integrate or absorb one before he is bowled over by the next; or the child has lacked the support he needed for his own spontaneous ways of coping with stress; or the stresses occurred at a critical phase when an important new function such as speech or locomotion was emerging. The incompletely established new functions are then vulnerable to stress and insecurity.

In other words, we are concerned with background and developmental factors; with constitutional tendencies toward disintegrative reactions, sensitivity, irritability, impulsiveness, and the like; and also with more complicated resultants to which the constitutional factors in the child, the stress that the child has experienced in the family, the accumulated residual strains from unresolved problems, and uncompensated stresses all contribute.

To the extent that vulnerable areas of functioning are secondary to pregnancy or birth disturbances, sequelae of illnesses, and the like, prevention measures involve improved medical care; to the extent that these vulnerable areas are the resultants in large part of genetic factors, prevention (short of guided or selective breeding of human beings) involves the development of balancing, compensating, or control factors that can help the child to manage his own limitations. To understand these we need to look at factors offsetting vulnerability.

We find the chronic stress and strain of disturbed parent-child relationships undermine the child's ability to utilize his resources; here we can include stresses rooted in parental ignorance of what to expect from a child with his shifting orientations and attitudes as they reflect the inner demands of successive phases of development; stresses intrinsic within unbalanced parent-child personalities, as in the case of a child of slow tempo with a quick mother or vice versa an extremely active child with a reserved quiet mother or mother of limited energy; stresses embedded in complex parent-child rivalries and exaggerations of normal conflicts of psychosexual development.

That is, stress arises chiefly within the child or within his relationships to the environment or as an effect of unusual impacts from the environment.

In all cases the central problem becomes (within himself and in his relations to the environment) the question of the extent of the child's resources for coping with stress in such a way as to permit growth, increasing integration, confidence, and mutually gratifying exchanges between and interactions with his environment. When he cannot handle stress, that is, when he is overwhelmed—immobilized, made panicky, frantic, blocked—he needs active assistance and support for his efforts to achieve better integration, and to grow.

The problem of prevention, then, is one of assessing the external and internal factors in the child's experience of stress and crisis and the child's capacities to deal with it; then finding ways to support the child's efforts toward mastery. This can include both medical, social, and psychological help (giving him usable knowledge and insight where he can use it, as before an operation; comfort in the terms that can help him; support for mastery in his terms; compensatory gratifications that have value for him;

opportunities for discharge of tension; help in communicating his experience of stress; doses of challenge, reality testing, and stimulus to give up unconstructive defenses at a pace he can manage; appreciation of his efforts to cope and progress in coping). This can go parallel to management of the environment to prevent the child from becoming overwhelmed by stress with which he cannot cope.

Up to this point we have emphasized chiefly endogenous factors in vulnerability in the child, their complex resultants, and some suggestions of ways to begin to deal with them.

We now turn to factors in stress more involved in specific external events, culture patterns, ways of handling the child.

Stressful Experiences in Infancy

Data from our study show the importance not only of large developmental crises such as weaning, toilet-training, separation from mother, and hospitalization but also day-by-day stresses from external factors. We need to recognize the impact on the baby of cumulative experiences of being forced, teased, subjected to unpleasant and frightening experiences such as inoculations and injections, and of ways of handling by the mother that do not meet the individual and unique needs of the particular baby with his individual cravings for contact, soothing rhythm, motor freedom, opportunity to look around at the world, and so forth; and also the intrusive impositions that can easily occur when a baby is handled like a doll or an animal whose own sensitivities and rhythms are ignored.

The normal range of expectable crises that a baby goes through include of course the pregnancy and delivery crises, but there may also be a crisis in the manner of changing from breast to bottle feeding, or in some instances with the introduction of a new food or new vitamin. Any new situation may precipitate a crisis for certain babies, who refuse to eat at all when a new food is started, or cannot sleep in a new crib. Botk K. Wolf (16) and the Escalona-Leitch data (17) record disturbed reactions to strange people in some infants as early as the age of two months.

Prevention here is helping the mother to avoid what we can call *strangeness shock* and to help the baby get used to things. Infants have a major task of becoming comfortably familiar with and at home in a complex and strange world. Getting used to each experience of newness, new foods, new places, new people, new ways of being handled, new discomforts or pains, is a difficult process for some babies, and one that leaves scars, weak spots, a residue of anxiety, or low thresholds for disturbance; with other infants the new experiences bring new gratifications, with residues of positive hopeful expectancy toward future new experiences.

Among our preschool children certain constant or recurring stresses are also experienced; these vary in number, severity, and impact on the children. We can summarize these from data in the reports by mothers first, then add a brief comment on evidence of intrapsychic stress from clinical data.

Nearly half the children have various problems including *exacerbated oedipal conflicts* connected with lack of independent sleeping arrangements, sleeping up to four children in one small room, sleeping in the parents' room, and even lack of any consistent sleeping quarters. Over a third lived in cramped or shabby homes, in a few cases in

poor neighborhoods, and some of these had very inadequate equipment for play.

In half a dozen instances mothers were at some time markedly depressed, or ill with emotional disturbance requiring psychiatric care for a limited period. Two fathers were alcoholic at periods, and two were hospitalized with diabetes; two had accidents. Two mothers have divorced the fathers, one remarried. Seven children have experienced death of relatives, mostly grandparents; with two, death of a dog was heartbreaking. Not just the death of the grandmother or the uncle may be important, but also the impact of death on the mother, on the father, or on the oldest sibling who has an attachment to a person who is very sick or dying; there is the cumulative impact of all this on the baby or little child. Certain mothers were able to give the child very little during a period of acute mourning so the child had, as it were, a double loss.

Emotional ups and downs of the mother were especially important in the vulnerability of the girls. From the case analyses also I have been impressed with the dilemma of the girl with an emotionally disturbed or physically ill mother. During the first years of the child's life, the little girl needs to identify with the mother and unless she has enormous support from other members of the family and someone else with whom she can identify, she is apt to introject the patterns of disintegrative reactions shown by the mother more than is the boy, who is fortified by his ability to identify with the father. It may be a fluke that in this sample there were more emotional disturbances among mothers than among fathers. In any case we did not have the material to look at the difficulties of boys identifying with disturbed fathers; there were two boys to all intents and purposes without fathers; one had died in the child's early infancy and the other way away in the armed services most of the time. In the second instance, the boy developed a clear-cut masculine pattern through identification with the image of his absent soldier father.

Both external and internal factors were involved for six children who had marked *separation anxiety* and anxiety about new situations at the beginning of the project (an additional five showed mild anxiety). One child showed separation anxiety only when her mother was ill. Individual differences in children's capacity to handle separation are apparent when we consider that at least twenty-six of the children had experienced absence of the mother, for hospitalization, birth of a baby, visit to relatives, vacation with husband (1), religious retreat during the preschool period. In addition one little girl, her grandmother's favorite, felt deeply the loss of the grandmother's support when the family moved from the grandparents' home to an independent house. In many other instances the gap left by absence of the mother was comfortably filled by the presence of the grandmother.

Moving also presents major problems of understanding to certain young children for whom leaving may mean loss of one's universe. When three-year-old Molly's family was going to move, she said "I'm not going to move." Her mother sat down and talked to her about it: "Daddy is going because he has to go to a new job and I'm going and Billy is going and Trudy's going and our dog is going and the cat is going and you can take your furniture and your teddy bear and you can have all your things in your new room and in the new house." Molly said, "Well, O.K., I'll go." A crisis was threatened until she began to understand.

It is important, then, whether a new situation is understood. Stress that cannot be understood was implied in

David Levy's (8) article on operations, which reported 75 per cent fears after an operation at age two compared to 20 per cent at the age of five. I think that we cannot overestimate the importance for management of crisis of the child's capacity for understanding at the time. Greater stress tolerance is a resultant also of other aspects of emotional maturation in this period.

All the children had some infections but the disturbing effects appeared chiefly when too many came too fast, or when an illness came in a setting of other stresses. One child came temporarily to a developmental stop after a broken arm, mild polio, a baby sister with more severe polio, a new baby sibling within ten months. Or *severe illness and hospitalization at a critical phase* may involve greater stress as when a little girl was hospitalized for infantile eczema during her period of development of locomotion. Prolonged colic during the first six months when basic perceptual functions are emerging is a threat to the foundations of ego functioning; later we shall discuss the influence of this earliest phase on development in greater detail. Illnesses unusually prolonged and repeated deplete the child's morale as when one boy lost energy and drive during the period of a long throat infection, and developed difficulties at school.

We also need to recognize external as well as internal factors in the *fears* that all children show during the preschool period, many of them paralleling those described by Jersild (6) in the 'thirties on a New York sample; new situations strange people thunder and other loud sounds and noises, dark, death, animals, snakes and bugs, floods*, tornado threats, getting hurt, doctors, hospitals, fire engines, firecrackers, etc.; but with the contemporary additions of hydrogen bomb, "shots" (hypo), the locally stimulated fears such as kidnapping,† and religiously stimulated fears such as hell and heaven, ghosts (and dwarfs), sin. Some children conquer or outgrow their fears, but the capacity to cope with the environment was seriously disturbed by fearfulness in several children.

*The families of five children suffered during the 1952 flood, but we had no evidence that this frightened the children as much as did severe thunderstorms, for instance, or that the floods in themselves had lasting effects.

†A Kansas City child was kidnapped and killed in 1953.

About half the children have been disciplined by corporal punishment, in several cases with belts or paddles; deprivation, restriction, sitting in a chair, mouth-washing, hand-slapping, and other methods were used. But the stressful effect of discipline is seen chiefly in children whose parents in two instances impose unusual restrictions, because of religious taboos. Restrictions typical of the culture—e.g., breaking things—are casually accepted, along with the punishment used to maintain them.

Conflicts as a predisposing factor in reactions to external stress are familiar to us; these children have their share of sibling rivalry, oedipal, sex, and aggression conflicts. But we must point out that in the developmental imbalances already referred to and also in the combination seen in a baby who has great gratification in response to certain sensory stimuli but is also easily overstimulated and therefore has a possibility of strong negative reaction, we have a certain fundamental *internal basis for ambivalence and conflict* that underlies some of the other predispositions to ambivalent reactions to external stimuli.

Another struggle that we put in the group of stress experiences arises from the daily frustration of efforts of the child who is stimulated to or internalizes aims or

aspirations that his equipment does not permit him to reach. One of the children in our group is a little boy with intellectual interests and aspirations, without the ability and IQ to deal intellectually with such problems. We see this in other children with motor drives (in some instances greatly reinforced by environmental stimulation) that are too strong to permit coordination.

Conflict between the child's needs and preferences and the environment's assumptions about what is good for a child can produce stress; by contrast, one of the things impressive in Topeka is the capacity of the environment to tolerate temporary regression with an understanding that the child has times when he needs to let down. But the difference between the degree of stimulation or demand from the environment and the level of the child's skills and capabilities and the relation of drives to fatigability is also important. As Dr. Heider says, some of our children most responsive to environmental stimulation live "close to the margin," and practice brinkmanship all the time, thus having small reserve with which to handle emergencies or unexpected extra stress.

Here we can see that adequate preventive work needs to be based on precise evaluations of the total capacities and limitations of the child, and not simply upon an appraisal of his intellectual skills or potential aims.

If we now look at what we might call intrapsychic vulnerability as rated on the basis of the psychiatric view of the preschool child,* it is useful to note at the start that, of the children about whom the psychiatrist was concerned, about ten showed potentialities for hysterical reactions, future character disorders, extreme involvement in conflicts, or other intrapsychic pressures that he thought would produce trouble before long. In addition, the possibility of minimal brain damage was suspected in connection with dysarthria and slight difficulty in motor coordination in a couple of cases.

*Grace Heider's detailed analysis of vulnerability at the preschool stage is based on a comprehensive review of all the data, and is a broader concept, weighing the stresses and supports in the environment along with the strengths and weaknesses of the child himself. This work is in process and subsequent to the analysis I am summarizing here.

Most of the rest of the children have been moving along, with ups and downs to be sure, but on the whole not very different from the picture we get from Macfarlane's research and other studies showing the normal range of problems for a normal sample of children. We ourselves have been concerned about one very bright boy who has the highest IQ in the group but who is developing on a very restricted basis and who is not able to move into new situations with any degree of freedom, does not get satisfaction out of his school work, and in general does not seem to be functioning at a level that we would expect from his high ability. He is very stable and there is no problem of likely disintegration; however, in terms of active coping with the environment and range of enjoyment he is sufficiently limited to have stirred up much discussion by the staff.

Positive Resources for Coping with Stress

Our statistical analysis of positive coping resources has highlighted certain other broad generalizations.

Within our sample of relatively normal children from more or less normal backgrounds (although half a dozen of the mothers showed one or another degree of emotional disturbance requiring psychiatric help during these ten years of our knowing them), *the individual specific areas of*

vulnerability do not turn out to be as determining in the final evaluation of the capacity of the child to maintain his own integration as are the cumulative effects of all factors in relation to the positive resources he brings to handling himself in his environment. This of course is something that we see every day very clearly in relation to physical defects and limitations. A child may be partially crippled by disease or may have some partial or total sensory defect in one or another area, may be limited by certain environmental inadequacies, but the extent to which this is expressed in emotional disturbance is a matter of *how he deals with the limitation*, whether he actively handles his life in his environmental setting so as to minimize or to master the stress that the limitation might cause. The same principle applies to less visible sources of vulnerability, extreme sensitivities, fatigability, a high reactivity, variability, autonomic instability, and other deviations within the range of this sample that are handled by some children skillfully enough to make it possible for them to maintain a high level of integration.

There are four major aspects that can easily be seen when we look at the positive coping resources of the children as they deal with the environment and their own resources and limitations within the environment. First of all is the *range of gratification* available to the child including his interest, the warmth of response toward objects, to people, the depth and sincerity of interest; etc.; all these are relevant to the child's ability to use substitute gratifications, to sublimate, and to find new solutions when he is frustrated in one area.

Second: Important is every aspect of the *positive, outgoing attitude* toward life, including pride about himself; courage in facing challenge, difficulty, and obstacles; resilience and capacity to mobilize resources after frustration, disappointment, and the like.

Third: The *range and flexibility of the child's coping devices and defenses* and his ability to use defenses in a constructive way is the next group; that is, being able to *delay long enough to plan*, being able to *fend off the environment or to turn away from excessive stimulation*; being able to *deny for limited periods* of time until one can mobilize one's positive resources or find solutions; being able to displace and project within limits as well as to sublimate. In other words, a moderate use of defenses that can serve the purpose of cushioning the impacts of stress in a way that is helpful to the child. Defenses only become pathologic when they become rigid, fixated, and used to the extent that they interfere with resourceful, resilient handling of problems.

Fourth: Related to the above but worth looking at separately are the *capacities to regress*, to *give oneself leeway to let down*, to *retreat to a level of functioning* that does not make such acute demands upon oneself, to indulge in less mature forms of fantasy or of satisfaction. In short, regression in the service of recuperation and regaining strength is important in circumscribing the effects of vulnerability.

In our research group we see that some old-fashioned virtues and strengths such as courage, autonomy, determination, and their relatives have a place and hold their own, but alongside of these the contribution of safety valves, protective devices, and aids to recuperation, including defenses and periods for healthy regression, are equally important. By and large we are apt to allow ourselves more of the latter than we permit the children; a balance of positive effort with flexible defenses and regressions is important at any age.

We also see the capacity to maintain mental health and prevent mental illness in terms of *balance of ego strength and instinctual strength* and many other kinds of *balance; perceptual clarity; motor tension release, flexible distribution of energy being able to accept limits, resilience in mobilizing resources under stress.*

Similarly with the capacity of the child to fend off excessive stimulation from the environment or to change things, to try to restructure situations to meet his own needs: these may be regarded with respect by the parents and other persons in the environment, or they may be blocked and interfered with, and this would have much to do with the ability of the child to deal with his stresses. I would include here what I call the orchestration of coping patterns and defense mechanisms.

The inference from this, then, is that if we could diagnose children more carefully so as to have an accurate appraisal of the potential problems created for the child in his environment by his sensitivities, his tendencies to be very reactive, his difficulties in functioning in any psychic or physical area, and the like, we could have a clearer idea of the problems within himself with which each child had to cope, and it might be possible for us to help children to deal with their own limitations in more constructive ways.

From this point of view, primary prevention also includes everything that can strengthen the child's capacity for mastery: tolerance, insight, flexibility, realism and perceptual clarity, courage, resourcefulness, tension discharge, and techniques for changing the environment.

Development of Capacities to Cope with Stress

This focuses our attention on primary prevention as control of the factors that increase or decrease coping capacity. Quantitative data show that, in our study, infantile oral gratification is significantly related to clarity of perception among the preschool variables and negatively related to loss of perceptual clarity under stress. This seems to imply that oral gratification in early infancy is a necessary foundation of integration that protects functioning through later development; or it may be an early expression of integration. This makes sense in relation to observations of disturbed children in whom perceptual functioning fluctuates and children whose perceptions are easily distorted under stress; in these children we often find a history of extreme gastrointestinal discomfort and disturbance in oral functioning in early infancy and in the most disturbed children the bad start is often most extreme. It seems worthwhile to discuss in some detail the role of such early foundations of mental health. Other areas require equally careful study but space precludes detailed discussion of more than the oral phase.

Another of the strongest positive correlations between oral gratification and other variables is with preschool strength of interests; this would seem to imply that oral gratification in the first half-year reinforces the infant's capacity to cathect the external world in a strong and satisfying way. Many other findings in our study point in the same direction.

The positive correlation with support from siblings is a tantalizing finding and suggests the possibility that the orally gratified baby is better able to relate to siblings in a less threatening and anxious way, being more free from concern about whether he will get enough, and thus more free to arouse positive responses from siblings.

A significant positive correlation between oral gratification in infancy and the ability to limit or fend off excessive stimulation may be understood in terms of the likelihood that an orally satisfied baby is relatively free from insatiable stimulus hunger that would make it hard for him to be selective or active in limiting stimulation. An initially unsatisfied baby would tend to reach out for stimuli beyond his own later physiological need. Close to the ability to limit or fend off excessive stimulation is the significant correlation with ability to control the impact of the environment.

The significant correlation with ability to mobilize energy to meet challenge or stress may not be as completely obvious unless we reflect that the orally gratified baby is more apt to be free from these defensive structures that would interfere with flexibility and mobilizing energy.

A positive correlation between oral gratification and security confirms what we would expect to start with. A positive correlation with sense of self-worth and a comfortable relation to the child's ego ideal along with adequacy of the child's self-image in the child's social milieu can be seen along with the significantly positive correlations with clarity in sex role, assertiveness and forthrightness, and differentiation of self from others, as well as "positive self-feeling level, it feels good to be."

Taking these positive correlations in relation to the significant negative correlation between infantile oral gratification and tension as rated at the preschool level, we can infer that oral gratification in the first six months tends to leave the baby with a good feeling about itself, free from chronic tensions that make it dependent upon constant stimulus feeding from the environment and which blur its perception of the environment; also it is left freer for the development of clear awareness of self vis-à-vis others, and for maintenance of stable positive feelings about self.

(More or less consistent with what I have just said are the negative correlations between oral gratification and such variables as feeling of being rejected, tendency to be demanding in relation to others, tendency to become fatigued, being critical of people and depreciating others.)

The correlation between oral gratification in infancy and what we call Coping Capacity II—that is, ability to maintain internal integration—is considerably higher than the correlation with Coping Capacity I, which refers to the child's ability to make use of the opportunities, respond to the challenges, and deal with the frustrations presented by the environment. This adds still further weight to the importance of the first year of life for the basic foundations of ego strength.

An example of a constellation of correlations different from the group associated with oral gratification is the group associated with courage as rated at the preschool level. Here we find significant positive correlations with various measures of motility: motor coordination, smoothness in movements, purposefulness of movements, fineness of coordination, freedom to translate ideas into action, competence and mastery, speed or tempo, and motor skills and use of motor skills for coping with environmental demands, although these do not follow exactly the same patterns for boys and girls. I will not go into the differences at this point.

An example of how increased understanding of the relation of the mother to the baby can guide preventive work is implied in the following portion of our findings: Autonomy allowed in the feeding situation in the first six months

by the mother correlates significantly with perceptual clarity, impulse control, tolerance for frustration, capacity to use substitute gratification and to postpone gratification; positive self-appraisal, differentiation of self from others, available neutral energy, ability to harmonize goals, ability to facilitate resilience by timing rest. It correlates negatively with loss of perceptual clarity under stress, demandingness, impulsiveness, tendency to destructiveness, power drive, fear of hurting oneself.

The capacity to protest, resist, and terminate unwanted stimuli, including distasteful or surplus food, correlates significantly with the preschool tendency to defend one's own position, maintenance of self-regard in the face of difficulty, ability to control the impact of the environment, satisfaction in mastery, flexibility in adapting means to the goal, ability to restructure, and coping by changing the environment, self-reliance, self-awareness, ability to mobilize energy to meet challenge or stress, problem-solving attitude toward life, reality testing.

In other words, when our infancy observations dealing solely with children in the first seven months of life are compared with ratings of the children at the preschool level based on examinations and observations by many different persons, it looks as though our evidence tended to support the hypothesis that profound patterning of the ego is laid in the oral experience of the infant in the first six months of life; we have some evidence that this influences the foundations of clarity of perception, later self-image, integration, and mental health.

In short, I am saying that one foundation of ego functioning rests in the baby's experience of achieving mastery of the feeding experience in the first weeks of life, and that individual differences in the patterns evolved during these early weeks and months contribute significantly to the adequate patterning of later ego functioning. We can add, of course, that intense experiences during later critical phases or affecting highly cathected functions, differing from one baby to another, modify the pattern laid down during the earliest weeks of life. Both positive and negative experiences of subsequent phases of blossoming, and of vulnerable phases, are important here.

The first six to eight months is also the period during which the self is becoming differentiated from others [cf. Jacobson (5), Spitz (12)]; positive or negative sensations (leading to massive autonomic reverberations) from the feeding experience are associated with both the emerging self and the gradually differentiated environment. This is also true of other basic experiences—pleasant or unpleasant contact, auditory and visual experiences—provided only that they are strong enough to involve diffuse affective concomitants as does oral gratification, frustration, or distress. Our significant correlation between gratification in feeding during the first six months and level of self-feeling: that at the preschool stage it feels good to be, along with maintenance of positive self-feeling and other nuances of Van der Waals' (14) "health narcissism," fits in with our psychoanalytic expectations at this point.

"Satisfying mothering" for girls in the first six months correlates significantly with later expressiveness of speech, energy level, security, alertness, responsiveness to a wide range of stimuli, pleasure in cognitive functioning, pleasure in being oneself, differentiation of self from others, involvement in play activities, range of affects, tempo of recovery from emotional states, facing the world with open anticipation, warmth, naturalness, accepting people as they are, pleasure in handling materials or

objects, receptivity to environmental cues, qualities, positive self-appraisal, realism-imagination balance, freedom from inhibitions, judgment, love-aggression balance, balancing self and social demands, resilience, adequacy of discharge of tension, tolerance of regression.

Complex experiences of mastery over distress owing to colic, frustration owing to early difficulties in coordination, or like accomplishment, may provide a foundation of anxiety-triumph sequence patterns with an undertone of repressed frustration, anxiety, and anger; these are important for later motivation to make efforts to triumph over obstacles, pain, frustration, and the like (with the help of enough denial to support mobilizing and directing the energy toward mastery).

Later subsequent major (massively reverberating) stresses owing to illness, pain, loss, especially when occurring during a critical phase (development of motility, speech, psychosexual excitement, or other determinant factor) may change the positive patterns established during the oral phase. Our prime example of this was Manny who had a good start at four weeks, but in the second and third years of life fell into a lake, had repeated high temperature illnesses, ear infections, hearing loss, and possibly mild brain damage contributing to speech and motor problems. Even here, the good initial start evidently helped to sustain the warm positive approach that was expressed in his good relationships and his appealing "Can you help me?" So also, Thea, an initially gratified infant later exposed to prolonged severe infantile eczema, hospitalization, flood, seeing the birth of a sibling in the next room, poverty, and the like, was able to maintain her internal integration well at the age of four to five. Also Will, whose parents were in conflict and divorced when he was six years old, maintained his cognitive and social functioning although at the price of obesity at the time of maximum tension between his parents.

Probably the extent to which subsequent experience will change the trends established during the oral phase will depend in part on some of the factors already mentioned; the fluidity or variability of autonomic functioning or reactivity of different systems, the stability and flexibility of the defense structure developed by the child, as well as the factors in the environment supporting or contributing toward integration, and the impact of single and cumulative stress and crisis experience in later stages of development.

The implications of this for direct preventive work are, it seems to me, that just as when we are working with the physical problems of a cerebral palsy or pilio child we do not consider ourselves entitled to respect what we do unless we have a very precise idea of exactly what the child's experience of stress or crisis is, what he can manage by himself, at what points he needs help; we need to know for every child through what steps he must go in order to be able to make progress toward greater mastery. All children need this diagnosis of detailed strengths and weaknesses, the points where they need help and the points where they can do well to struggle ahead on their own. This is a much more delicate and problematic task with children within the normal range because very often we have extreme difficulty in evaluating the implications for the child of what we see.

Ecology and Prevention

Kansas has a salubrious climate so that it is possible for the children to run around freely; also, in a relatively

small-town type of community, with traffic channeled in certain major streets, the *world is safe* for children. From the time the youngster can walk at fourteen or fifteen or sixteen months, he can push open the back door and get out in the yard. In other words, it is an area that protects and maximizes autonomy and the child has a chance to experience it completely.

Cramped box houses with tiny bedrooms and no privacy often are of relatively poor construction, with thin composition walls; in these the patterns of family life are lived out. Two, three or four children sleep in one room, even in the same room with a parent. The relation of this to sex curiosity, involvement with parents, and the acuteness of oedipal concerns is obvious. This is basically a problem of the role of *architecture* as well as *economics* in prevention.

By and large this is not a group that can afford to have much furniture: high chairs, play pens, baby bouncers, strollers, buggies, and all the other things some middle- and upper-class families are accustomed to as ways of keeping the baby safe and busy, things that create distance between the baby and the mother, are at a minimum. Here, prevention includes helping families to be aware of the hazards of confinement and limitation of activity owing to overuse of protective furniture.

Next, we consider the supportive aspects of the social configuration of the family. Many of our families have *grandmothers and relatives nearby*. Some of them are one step away from the farm. This means *support*; in some cases stress to be sure, but by and large we have been impressed by the support. Particularly when the mother goes to the hospital, it does not mean a real separation experience for the child; his grandmother comes, whom he knows very well, or he goes to grandmother's house, and many of the aspects of the birth of a sibling that are stressful for children in large cities are less stressful here. At the same time, it is true in certain cases that there is tension between the generations; we have to balance the plus and minus factors in the relationship, but preventive work can also help the generations to understand each other and increase their mutually supportive potential.

The *ideology* of the culture as it is expressed by the family also plays an obvious role in contributing to and also offsetting stress, especially in relation to religion, for instance. Three of our children have acute conflicts and rebellious feelings toward parents because of *restrictive effects of religious taboo standards* and notions; such a thing as "I can't play with any child who doesn't go to my church" creates severe resentment and intensifies rebellious and hostile residues of infantile conflicts with the mother. On the other hand, certain children at the age of six or seven when asked, "What do you do when you are not in school?" will say "I belong to my church." The church can contribute a sense of belonging and provide support additional to that of the family. Help to churches in understanding the needs of families and children can maximize this.

Along with the ideology of the culture, I would include such things as the way the mothers feel also reflects attitudes of other persons about what goes on with babies in terms of the attitudes she thinks she is expected to have, the way she feels about nursing, and similar matters, or what other persons will think if the baby isn't clean enough, and so forth.

Communication is also basic; one kind of mother just doesn't know what to do with a baby in terms of communication; she is under the influence of a tradition of *no baby*

talk and "no baby talk" inhibits her responding at any level that the baby can accept; the mother follows assumptions derived from an ideology for some of which the experts are responsible. Helping mothers to understand the great importance of communication from earliest infancy on is a major need.

The Contribution of Pediatrics and Nursing as Influencing Ideology and Practice

It would be perfectly possible for doctors, nurses, teachers, and many other persons to be helped to understand the process of development of mental health and to help it go in the right direction. In medicine the pediatrician from the start is thinking about the needs of this *individual* child. The formula is adjusted in terms of how strong or who weak, how much sugar, which kind of prepared milk, what additional nutrients, and so forth should be added in order to meet the needs of this individual child. Similarly allergies are quickly recognized and, when solid foods are added, those solid foods are utilized that the child can assimilate without allergic reactions and any that create gastric disturbances are omitted; substitutes are found for them.

We have not yet reached this kind of pediatric thinking in dealing with children's feelings and yet the need for recognizing the emotional equivalents of allergies, low sugar tolerance, high protein requirements and the like is present both for the direct effect on the child and the long-time influence on the mother-child relation. We are at a point where it is not only possible but desirable to begin thinking of babies in such terms as *the amount of stimulation they can stand, the amount and kinds they need*. One baby sleeps best when tightly wrapped up, where another needs arrangements that will permit more activity. One baby will be soothed by rocking and jiggling where another one will be soothed by being stroked and comforted with tactual stimulation, and still another responds to being held, kittenlike, on a shoulder. One baby expresses a desire very early to be sufficiently vertical to be able to extend the range of vision, where another baby is content to lie down and bang at toys on a cradle gym as long as he can satisfy his desire for manual contact.

Such things may sound trivial but we have cases in our group of normal babies where the subsequent vulnerability of the child could be seen to have its roots in such things as these.

Babies need more than good diets from pediatricians; the mothers need guidance in providing feeding experiences that allow the babies to follow their own rhythms and pace, and to do as much for themselves as they can with satisfaction. They need individually measured stimulation, play, communication, opportunities for many different kinds of mastery, gratifying experiences with the new and the strange, and other contributions to ego development that are of equal importance to the meeting of basic physiologic and libidinal needs of infants.

It is important to avoid associating the new and the strange, or change, with pain, especially to skin-sensitive babies; we should not have inoculations as major experiences of the strange. (Since moving change, and the new are likely to be important features of life for some time to come, preparation for handling and integrating them is important for many children around the world.)

If pediatricians, nurses handling well-baby clinics, and public health nurses were trained in the understanding of

the long-time consequences of the kinds of deprivation that can occur when mothers are exhausted or do not understand the baby's need for contact and stimulation, they could guide young parents toward finding solutions for the problems involved here.

In addition, we also have to say that therapy as well as education for mothers is primary prevention for disturbance in children.

Education of pediatricians along all the lines discussed would certainly be very high on the list of important prevention needs, as well as education of nurses, nurses in children's wards, and particularly of nurses in hospitals; the nurses are the persons who are really doing the work in a well-baby clinic. I would also include bringing understanding of babies and little children somehow into the churches. Helpful insights and attitudes can be stimulated in mothers by contagion, imitation, or identification with the supportive, kindly, observant understanding approach of a wise pediatrician, nurse, or teacher. As fast as the whole range of persons most closely in touch with children in their homes, in clinics, hospitals, churches, and schools can recognize the danger signals in individual children, their individual needs for support, and ways of helping themselves, the more able we shall be in helping children turn potentially overwhelming and damaging crises into manageable stress, whose mastery can contribute to greater strength and capacity to handle new stress.

But beyond this, basic prevention of mental disorder in children requires child-oriented and family-oriented thinking and planning throughout the culture: community planning and architecture, theology and the church, education, mass media of communication, all contribute their share to defeat or support of the child's effort to maintain stability in an increasingly complex, and changing world.

Summary

From this point of view, primary prevention cannot ignore *ecology* (space, privacy, stimulus-range of the external environment); *architecture* (location of parents' room, size and equipment of child's room, with opportunities for discharge of tension, healthy use of energy); *adult stability* (especially mother's emotional balance) and *family unity*; *ideology* (assumptions regarding types of behavior to encourage: e.g., *balance of autonomy and ability to ask for help, drive to grow up, with tolerance for regression in the service of resilience; balance of love and aggression*); *pediatric and hospital handling*; *maternal preparation* for support of infants' developing interaction with the environment as well as maximal protection and comfort during the period of early integration, emergence of ego functions (perception, manipulation) and ego formation.

A comprehensive program of primary prevention would involve a discriminating assessment of the sensitivities, imbalances, strengths, needs of the infant, strengths and blind spots of the mother in her response to the baby, other hazards and strengths of the environment in relation to the equipment of the individual child. Education of pediatricians in the personality needs of infants and young children could be a major factor here, provided the resources for supplementing family care could be developed. It is likely that some psychogenic childhood schizophrenia and much neurotic instability could be eliminated with adequate care in the first two years.

But before we can be on thoroughly solid ground in preventive work we need to have a more integrated con-

ceptual formulation in dynamic terms of the interaction of such factors as those discussed by Pasamanick (11), Lacey (7), and Williams (15), all bearing on the balances and imbalances of organic aspects of the infant, with the processes of interaction with the environment visible in feeding situations and mother-baby-interaction in the context of the total stimulus pattern with its frustrations, excessive demands, and its gratifications in infancy, and in relation to the learning capacities and style of the individual infant. Similarly, for each successive stage after the first six months when basic perceptual and motor functions are emerging and being patterned by the quality of the organic experience of the infant, we need to see every new experience in relation to the context of organic stabilities and instabilities, the tolerance or frustration thresholds they involve, the impact of the experience on the emerging functions of the child, and the progress or interference with integration that all this brings. Oversimplified generalizations, whether they are concerned with hospitalization, good mothering, or types of schooling, will miss the boat; what is urgent is an understanding of the dynamics of healthy growth for each child or at least for each kind of child, comparable to our understanding of the developmental needs of other living species.

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ADDENDUM "2"

SUPPLEMENTAL CARE

WHO IS CONCERNED?

Public officials, governmental agencies, community organizations and the media have been increasingly interested in day care for children. As greater numbers of women enter the labour force, the demands for well supervised, licensed day care increases.

Psychiatrists are being asked to consult to these organizations, to design enrichment programs to promote normal healthy development as well as specialized programs for children with physical or emotional handicaps. If we are going to respond to these requests, we must be as informed as possible. To this end, our group undertook to survey the relevant literature. We hoped to compile the best research and perhaps dispel some of the misconceptions that are perpetuated from publication to publication.

WHAT IS SUPPLEMENTARY CARE?

Supplementary care refers to care for children provided by a person other than the parents. Care as incidental to education is not included. The majority of children requiring supplementary care are from families with working mothers, single mothers, single fathers, or families in crisis. Therefore, supplementary care includes infant group care, family day care, nursery schools offering full day programs, pre-school day care, before- and after-school programs, night care and in-home care.

IS SUPPLEMENTARY DAY CARE SEPARATION OR DEPRIVATION?

Since the work of Spitz and Bowlby, many have hypothesized that many repetitions of minor separations may have effects similar in form, although not in severity to major separations or deprivation. Recent studies of neonates show what many have long suspected that the biological mother is usually more responsive to her own infant than the most expert and warm substitute caretaker. Winnicott stated "... the function of the nursery school is not to be a substitute for an absent mother, but to supplement and extend the role which in the child's earliest years the mother along plays".

Almost anything one wishes to say about the children of working mothers can be supported by some research project. Unfortunately, many of the studies do not control for ethnic background, socioeconomic status, number of sibs, or family stability. Most studies deal with children over the age of 2.

Walliston (1973) reviews some infancy studies that found no evidence of long term effects of repeated separations (Burchinal, 1963, Caldwell, 1970).

Some studies even suggest that children of working mothers are slightly more advantaged in terms of development quotient, socialization, and self-assertion than home reared. (Yudhim & Holme, 1963, Caldwell & Richmond, 1968, Moore, 1969.)

Those who believe there is a critical period between six months and three years as the height of stranger anxiety, postulate a need for continuity of care. Schwarz (1973) repeated Caldwell's work with no long term detrimental effects from day care placement in his infancy group. Later he compared the infant group, now age 3-4, with matched controls entering day care for the first time. Faced with a new environment, the early day care group had higher social interaction and more positive affect on entering and remained happier than the new group. Blehar (1974) reports a difference in the strength and quality of attachment behaviours of children entering day care at 20 and 30 months. Her finding that these children showed more oral behaviour and avoidance of strangers agrees with the work of Tizard and Tizard (1971) who found children reared in residential nurseries to be more afraid of strangers than those reared at home. Whatever the implications of continuing studies of the effects of parent separation on the children might have, parents must and will continue to work.

WHAT IS THE NEED?

In Ontario, there are an estimated 715,000 children under the age of 16 with working mothers. Of these, 135,000 are under the age of 6. There are only 44,000 licensed group care places available. Of these, only half offer programs for the full day. In addition, the government subsidizes 500

children in supervised family day care. 85-90% of children in the pre-school age are in family day care either with a neighbour, baby-sitter or relative. Present expansion is well above the expected 10% per annum, with 100 projects for an increase of 3,000 more places in 1975-76.

In Metro Toronto, an estimated 80-90,000 children are receiving some form of supplementary care. At most, only 10% of these are in licensed group care or supervised family day care.

In 1971, the Women Bureau, Department of Labour, calculated there were 17,400 children under 14 years with working mothers enrolled in day care centres. This represented only 1¼% of the 1,380,000 children under 14 of working mothers. The Department of Health and Welfare gives 1973 figures of 26,811 places for full time day care. But because of the increases in the women's labour force, this still represents only 1¼% of children under 14 with working mothers. While 7% of children age 3-5 of working mothers are enrolled in licensed day care, less than 2% of children under 3 are enrolled.

STATUS OF DAY CARE IN CANADA DEPARTMENT OF HEALTH & WELFARE, OTTAWA

	1971	1973
1) Number of children under 14 with working mothers.	1,380,000	1,537,000
2) Number of places in full day care.	17,391	26,811
3) Percentage of children under 14 with working mothers in day care.	1¼%	1¾%

The average cost per child per annum is \$2-3,000 in a licensed group care situation. Thirty dollars a week is a conservative estimate of the cost of family group care. It is evident that day care is available only to the very poor through Canada Assistance Plan or to the rich.

The most shocking statistic presented without any indication as to how they arrived at their figures, comes from the Day Care and Child Development Council of America. As of September, 1965, there were 38,000 children in the United States under the age of 5 left alone without any adult care during working hours. Some of the well documented horror stories reported by Keyserling (1972) arise out of such situations.

WHAT ARE THE CONCERNS?

INFANT GROUP CARE VS. FAMILY DAY CARE

One of the hottest debated issues is whether infants should be cared for in groups or in family day care homes with more individual attention. Group care may be a health hazard to children. Some countries have reported a three times higher incidence of respiratory infections in group care infants. However, preventative health, nutritional and psychological assessment can be more easily carried out and corrective measures instituted in group care. The cost of group care is almost twice that of family day care. Adequate staffing of a group care situation accounts for much of the cost, but it is difficult to recruit good and dedicated family day care homes.

Perhaps one of the best suggestions is a satellite program. A central community day care facility, which super-

vises a number of family day care homes in the immediate neighbourhood. The Family Resource Centre would provide a full day or part day program for older children as well as a specialized program for handicapped children permitting integration of the programs. Visiting homemakers, medical and nutritional consultants, nursing and social work services for parents and family care personnel would operate out of the resource centre. There would also be provision for central equipment pool and ongoing training of family caretakers. With support and role definition there might be less turnover of personnel.

Others state that employers should be responsible for providing adequate facilities for children of their employees. There are no studies which report on the effects of such facilities in Canada, but it is reported that mothers prefer services close to their homes. We must be cautious about accepting reports on such centres from other countries as these programs are often instituted to meet needs other than the welfare of the child.

PRE-SCHOOL PROGRAMS

Pre-school programs in fostering socialization often promote identification with the group. The child has little opportunity to be by himself to develop a sense of personal identity. As the normal child struggles for separation and individuation, we see typical ego-centric behaviour. Biting, scratching and assertive behaviours will be discouraged in group care.

Many programs for children age 3-5 are directed at the disadvantaged child. The American Education Research Association supported preventive programs on the basis that 50% of all factors which determine intellectual functioning are formulated by age 4. As critics descend on the Head Start program in the United States, many good studies on the advantages of pre-school enrichment programs are swept aside. Most of these studies have focussed on the academic aptitude of children with a nursery school experience as not appreciably different from their less 'advantaged' peers. However, it has been clearly demonstrated that individual behaviour patterns at the pre-school level seems related to later school functioning. Programs must plan intervention on a behavioural and emotional level as well as focus on cognitive functioning.

BEFORE AND AFTER SCHOOL PROGRAMS

The problems of the 'latch key' child have long been the concern of psychiatrists and social agencies. However, other than descriptions of current programs, there is little reported research.

SPECIAL PROGRAMS

In our concern to provide adequate supplementary care for children of working parents, the special needs of the economically and culturally deprived are often overlooked. Reports of specialized programs such as night care, visiting homemakers for family relief, parent resource centres are beginning to be reported in the literature. Specialized programs for pre-school Canadian Indian children are in operation in Ontario employing Indian personnel. As yet, there is no reported research on the benefits or hazards of such programs.

SHOULD WE BECOME INVOLVED?

The task of planning an environment that both fosters optimal growth and is appropriate to the child's stage of

development is a formidable one. As psychiatrists we have the training and experience to critically assess research from a mental health standpoint. If we accept primary prevention as one of the tasks of psychiatrists, we must not abdicate our responsibility to other mental health professionals. We must continue to upgrade our knowledge of current research or normal growth and development. When our opinions are sought, as indeed they will be, we can respond from as informed a base as possible.

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ADDENDUM "3"

THE HIGH RISK INFANT

The following text is a brief exposition of some current findings and controversies surrounding the concept of the "high risk infant". Neonatology has made immense inroads into the previously high mortality of infants born with medical complications. This is partly due to the increasing sophistication of postnatal resuscitation but also related to the regionalization for reproductive care. This allows the development of highly specialized centres in key locations in Ontario, present in Toronto's Sick Children's Hospital and the Departments of Paediatrics in Hamilton, Kingston, Ottawa and London. Infants whose delivery has been complicated, whose birthweight is below 1500 gr. or who have had other congenital abnormalities are treated in these centres. The size of each unit varies from 10 beds in Kingston to 60-70 beds at the Hospital for Sick Children, and 100 to 1000 admissions per year (Swyer and Goodwin, 1972).

The term "risk" as used in the literature implies an increased probability of handicap in childhood. At present, one generally identifies infants at biological risk for later sensory, motor or mental handicaps on the basis of pregnancy, perinatal, and postnatal factors related to infant mortality. Justification for this procedure derives from the concept that a continuum of casualty exists which has both lethal and sublethal manifestations. The lethal components consist of abortions, still births, and neonatal deaths while the sublethal manifestations include sensory, motor and mental disabilities (Parmelee and Haber, 1973).

This concept is helpful in identifying potentially important variables, but it does not aid us in determining the

predictive power of these factors. Such information is not available from present studies. Correlations between single perinatal or postnatal events and later disabling sequelae have been very low in several large prospective studies (Buck et al, 1969; Niswander et al, 1966; Parmelee and Haber, 1973). Similarly, the English risk register, which attempted to classify infants with items selected on the basis of clinical impressions, has failed because too many unimportant isolated events were included (Rogers, 1968).

Studies that have focused on mere comprehensive "risk" events such as prematurity and neonatal asphyxia or anemia have demonstrated greater incidence of disabling sequelae among infants who have suffered such trauma than among control infants. However, even these results have varied between studies because of the heterogeneity of the risk groups studied. In all follow-up studies of risk factors, a broad spectrum of outcomes has been obtained rather than a bimodal distribution of normal and abnormal outcomes between groups. While this is consistent with the concept of a continuum of casualty, such results do not aid in the identification of the strength of relevant variables (Braine et al, 1966; Douglas, 1960; Drage and Berendes, 1966; Drillien, 1964; Graham et al, 1962; Heimer et al, 1964; Keith and Gage, 1960; Lubeheco et al, 1972; Parmelee and Haber, 1973; Schachter and Apgar, 1959; Weiner et al, 1968).

One important recurring observation is that the outcome measures are strongly influenced by the socio-economic circumstances of the children's environments and this influence is often stronger than that of earlier biological events. However, there is also evidence that early biological problems lead children to be more vulnerable to adverse environments. Since health problems during pregnancy and early infancy are related to socio-economic status, the two variables must be considered inextricably interwoven (Braine et al, 1966; Douglas 1960; Drillien 1964; Heimer et al, 1964; Parmelee and Haber, 1973; Werner et al, 1968; Weiner et al, 1968).

Thus, with our present information, we can discuss which groups of infants are at risk of later disabilities on the basis of socio-economic and/or biological indicators, but we cannot specify the degree of risk or identify the individual infant who will suffer a disability in childhood.

A Cumulative Risk Concept

The majority of the infants in a "risk" group so far identified do sufficiently well on all outcome measures later in childhood that they cannot be considered truly handicapped. As a result, the manpower required for intervention programmes with the truly handicapped infants is critically diluted by the inability to precisely identify these children. Several studies have demonstrated that multiple factors may be considered as additive in determining degree of risk. Some have cumulated pregnancy, perinatal, and neonatal events and others have included socio-economic factors (Braine et al, 1966; Drage and Berendes, 1966; Weiner et al, 1968; Drillien, 1964; Heimer et al, 1964; Weiner et al, 1968). A recent study demonstrated high prediction of behavioural achievement at 7 years of age using a cumulative score of biological factors during a pregnancy, birth events, socio-economic factors and performance items during the first year of life (Smith et al, 1972).

With these points in mind, a useful risk scoring system presently employed by Parmelee (1974) might be one that:

1. Scores pregnancy, perinatal, and neonatal biological events and behavioural performances in an additive fashion;
2. Reassesses the infant in the first months of life to sort out those infants with transient brain insult from those with brain injury who remain deviant;
3. Reassesses the infant again primarily on a behavioural basis later in the first year of life, providing time for environments to have an effect on developmental progress.

Cumulative risk scores as advocated by Parmelee et al, (1974) are presently investigated and validated in long-term follow-up studies.

The problem this method shares with older methods is the great changes which take place in neonatology every year, making data published in 1972 almost useless in 1975. Nevertheless, the following neonatal conditions persistently increase later risk of an abnormal development.

1. Factors of Delivery

- (a) Breech delivery or any delay in the delivery of the child due to excessive moulding of cranium which may cause intra-cranial bleeding.

2. Prenatal Factors

- (a) Small for gestational age, i.e. less than 3rd. percentile in weight, body length. Risk is increased if infant weighs less than 3 lbs. Main problems are learning and behaviour disorders. (Fitzhardinge and Steven, 1972).
- (b) Intrauterine Infection—frequently causes severe brain damage.
- (c) Any congenital abnormality superimposed on any other pre-, peri-, or postnatal difficulty.
- (d) Any infant with birth weight of less than 1500 grams.

3. Postnatal Factors

- (a) Apgar score of less than 5 at 5 minutes (Schachter and Apgar, 1959).
- (b) Symptomatic hypoglycaemia, i.e. any jitteriness and not only convulsions.
- (c) Any child requiring artificial ventilation or admission to an intensive care unit.
- (d) Neonatal meningitis. Antibiotics do not work as well in newborns as in older children, hence the illness is a much more serious condition.
- (e) Prolonged separation of infant and his parents (Barnett et al, 1970; Elmer and Gregg, 1967; Farranoff et al, 1972; Klein and Stern, 1971).

A number of well executed studies demonstrate that prematurely born infants are four to seven times over-represented in population of battered children and those who fail to thrive. (Klein and Stern, 1971).

This is thought to be related to two phenomena:

- (a) The lack of contact between parents and their infants after birth may lead to a failure in the establishment of secure attachment between the infant and his primary caretakers and to later parenting disorders.
- (b) The premature infant's behaviour differs significantly from that of full-term babies. This impedes

parental attachment and may lead to distorted later child care practices.

Percentages of later abnormalities for all conditions mentioned are meaningless as they change from study to study but in general, one can say that girls fare better than boys.

Summary

The preceding text dealt with some recent findings linking cognitive and emotional disturbances in childhood to events taking place during pregnancy or the perinatal and postnatal period of life. The following conclusions were drawn:

1. Single perinatal or postnatal events are poorly correlated with later disabilities.

2. Comprehensive risk events such as prematurity, especially if infants below 1500 gm. are associated with a higher incidence of cognitive and emotional disturbance.

3. Physical assaults experienced during pregnancy or delivery can be ameliorated by good parental care, especially during the first year of life.

4. The repeated assessment of the neurological and cognitive functioning of the child and a repeated analysis of caretaker-child interaction leads to a cumulative risk score which may predict future cognitive and psychological functioning more accurately than present methods can do.

5. Advances in infant care, led by the regional centres for reproductive medicines are dramatic and constantly change the final outlook of the high risk infant. This together with the heterogeneity of many studied samples makes interpretation of outcome hazardous.

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APPENDIX "4"

CARLETON UNIVERSITY
FACULTY OF ARTS

ST. PATRICK'S COLLEGE
COLONEL BY DRIVE
OTTAWA, ONTARIO
K1S 5B6

7th April, 1976

Hon. Fred A. McGrand
The Senate
Parliament Buildings
Ottawa
Ontario

Dear Dr. McGrand:

I have read the text of your speech to Senate on crime and violence (Hansard, 123, 86) and wish to make the following comments.

There is no doubt in my mind that crime and violence is a major problem in Canada today, and threatens to become an even greater problem in the future. This is all the more disturbing in the light of the vast potential that Canada has to provide the basis for a truly human and humane society. Paradoxically, it seems that wherever the potential for humanity is greatest, the actualization of real human values is on the decline; our material wealth is no longer a means to the good human life, but is itself an end which defines the "good life" in crass, materialistic terms, breeding excessive individualism and greed, and the consequent lack of respect for others. This is, in other words, a greater problem than the absolute figures indicate, because we

have every right, given the state of our material and cultural development, to expect a trend toward peace and benevolence.

The relative lack of crime and violence in countries with different economic bases and/or systems would seem to indicate that these behaviours are not the natural human condition—that they are aberrations possibly resulting to some extent from *our* affluent way of life in the context of *our* economic system. If this is the case, all the more reason to give very high priority to research into these matters.

As you have pointed out, there are probably many other causes at work—environmental, genetic, early physical and psychological traumay... It seems to me that given the complexity of the problem, one thing required is a bringing together of the results of recent research—a "state of the art" study. To some extent our society's excessive individualism leads to lack of coordination in research efforts, and a resulting lack of effectiveness. This is true, in any case, in the work I have been doing on ecological problems which are also grounded in the material and ideological bases of our society and have multidimensional ramifications. What better place to bring about such a synthesis than the Seante!

In sum, I strongly endorse your proposal and encourage you to do whatever you can to see it carried out. I would be pleased to help you in any way that I can.

Sincerely,

John T. O'Manique, Ph.D.
Associate Professor of Philosophy
Member, Third Research Team for
The Club of Rome



FIRST SESSION—THIRTIETH PARLIAMENT
1974-75-76

THE SENATE OF CANADA

PROCEEDINGS OF THE
STANDING SENATE COMMITTEE ON

HEALTH, WELFARE AND SCIENCE

The Honourable C. W. CARTER, *Chairman*

Issue No. 16

TUESDAY, MAY 11, 1976

Fourth Proceedings on:

The Study of the feasibility of a Senate Committee
inquiring into and reporting upon crime and
violence in contemporary Canadian society.

(Witnesses: See Minutes of Proceedings)

THE STANDING SENATE COMMITTEE ON
HEALTH, WELFARE AND SCIENCE

The Honourable C. W. Carter, *Chairman*

The Honourable M. Lamontagne, P.C., *Deputy Chairman*

AND

The Honourable Senators:

Argue	Inman
Blois	Langlois
Bonnell	Macdonald
Bourget	McGrand
Cameron	Neiman
Croll	Norrie
Denis	*Perrault
*Flynn	Phillips
Fournier	Smith
(de Lanaudière)	(Queens-Shelburne)
Goldenberg	Sullivan—(20)

**Ex officio* member

(Quorum 5)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate of Canada, Thursday, 18th December, 1975:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator McGrand, seconded by the Honourable Senator Eudes:

That the Senate considers it desirable that a special committee of the Senate be established at an early date to inquire and report upon crime and violence in contemporary Canadian society.

And on the motion in amendment thereto of the Honourable Senator McElman, seconded by the Honourable Senator Carter:

That the motion be not now adopted but that the subject-matter thereof be referred to the Standing Senate Committee on Health, Welfare and Science,

After debate,

In amendment, the Honourable Senator Asselin, P.C., moved, seconded by the Honourable Senator Choquette, that the motion in amendment be amended by removing the period at the end thereof and adding the following words:

"and that the Committee be instructed to look into and report upon the feasibility of a Senate Committee's inquiring into and reporting upon crime and violence in contemporary Canadian society and that, if the Committee decides that such a study is feasible and warranted, it be further instructed to set down clearly how, by whom, and under what precise terms of reference such a study should be undertaken."

After debate, and—

The question being put on the motion, in amendment, of the Honourable Senator Asselin, P.C., seconded by the Honourable Senator Choquette, to the motion, in amendment, of the Honourable Senator McElman, seconded by the Honourable Senator Carter, it was—

Resolved in the affirmative.

The question then being put on the motion in amendment of the Honourable Senator McElman, seconded by the Honourable Senator Carter, as amended, it was—

Resolved in the affirmative."

Robert Fortier,
Clerk of the Senate.

Minutes of Proceedings

Tuesday, May 11, 1976
(20)

Pursuant to adjournment and notice, the Standing Senate Committee on Health, Welfare and Science met this day at 2:10 p.m., the Chairman, the Honourable Senator Carter, presiding.

Present: The Honourable Senators Cameron, Carter, Denis, Fournier (*de Lanaudière*), McGrand, Neiman, Norrie and Phillips. (8)

The Committee resumed consideration of its Order of Reference dated December 18, 1975, "that the Committee be instructed to look into and report upon the feasibility of a Senate Committee's inquiring into and reporting upon crime and violence in contemporary Canadian society and that, if the Committee decides that such a study is feasible and warranted, it be further instructed to set down clearly how, by whom, and under what precise terms of reference such a study should be undertaken".

The following witnesses from *Statistics Canada* were heard:

Mr. Lorne Rowebottom,
Assistant Chief Statistician,
Household and Institutional Statistic Field;

Mr. Marcel Préfontaine,
Director,
Justice Statistics Division;

Mr. Paul Reed,
Assistant Director, Research,
Justice Statistics Division.

The witnesses answered questions put to them by members of the Committee.

At 3:10 p.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Patrick J. Savoie,
Clerk of the Committee.

The Standing Senate Committee on Health, Welfare and Science

Evidence

Ottawa, Tuesday, May 11, 1976

The Standing Senate Committee on Health, Welfare and Science met this day at 2:10 p.m. to look into and report upon the feasibility of a Senate Committee's inquiring into and reporting upon crime and violence in contemporary Canadian society.

Senator Chesley W. Carter (*Chairman*) in the Chair.

The Chairman: Honourable senators, we have with us Mr. Lorne Rowebottom, Assistant Chief Statistician, Household and Institutional Statistics Field, Statistics Canada. Do you have an opening statement, Mr. Rowebottom?

Mr. Lorne Rowebottom, Assistant Chief Statistician, Household and Institutional Statistics field, Statistics Canada: I do not have a formal opening statement, but perhaps I could make a few introductory remarks.

The statistics for which I am responsible include those of the Justice Statistics Division, of which my colleague Mr. Prefontaine is the Director, and of which Mr. Reed is the Assistant Director, Research. I am not sure the information we have can be of assistance to you in your deliberations, but perhaps I could take a moment to indicate the sort of thing that we are engaged in and the type of statistical product that emanates from the division. If it is of interest to you, Mr. Prefontaine or Mr. Reed can explain that somewhat further. Our basic purpose today is to answer any questions that you may wish to direct to us.

The Chairman: I should explain to the committee that I discussed with Mr. Rowebottom over the weekend and yesterday why we asked him to appear before us. It was a decision of the committee at our last meeting that we needed more statistical information which is available in Statistics Canada, and which is necessary for the type of research suggested by Senator Bonnell. Following Senator Bonnell's questions, the committee decided that we should get somebody from Statistics Canada to inform us as to what types of information there are available, what types are published, and what types are available but not published.

Senator Bonnell pointed out that statistical information on childbirth, pre-birth conditions and conditions surrounding the birth of a child, would probably be available only in provincial departments. I think we want to make sure for our records exactly what information is available, what gaps there are and what further information is necessary in order to decide as to the feasibility of the investigation implied by Senator McGrand's motion. Time is so short that I did not want to waste any by telling you all this in my introduction. However, perhaps it is better that I should say it now, and it is within that framework that we can conduct our questioning.

I am sorry I interrupted you, Mr. Rowebottom.

Mr. Rowebottom: Rather than tell you what we do not have, which perhaps is more than we do have so far as it relates to what appears to be the focus of interest of your committee, maybe it would be best just to sketch out very briefly the types of information on which we concentrate.

First of all, emphasis has historically been on criminal rather than civil statistics, although the latter are not excluded from our concerns, and we have recently begun to consider the problem of civil law and its incidence within the community.

In the criminal field, we start by attempting to measure the amount and characteristics of crime in Canada. This is a broad spectrum of information which we gather from police forces of all kinds across the country—federal, provincial and municipal—under a uniform crime reporting system. Out of this we produce statistics relating to the amount of crime in Canada, classified by the type of crime committed. The amount of information we have about any particular type of crime varies according to the type of crime itself. On some we have a good deal; on some we have very little.

We then have a court program, in which we attempt to quantify the decisions of the courts and the disposition of those who commit crime according to the sentences they receive vis-à-vis the crimes they commit.

That is followed by a set of statistics concerned with the correctional institutions—the penitentiaries, prisons and other correctional institutions—to which those sentenced by the courts for crimes of various kinds are committed. We look at the populations of prisons and the through-puts of prisoners—"clients" to use the jargon of the trade—in the institutions.

We try to follow this with a quantification of what happens to people when they leave prison, and the extent of recidivism.

Our objective in each of these four categories is to integrate the figures so that we can provide the population at large, as well as those who are concerned with the administration of justice, with a total, integrated type of picture of the types of crime that are committed and the consequences to those who commit them, through the courts, through the prisons and subsequently.

The relationship between that type of information and your particular deliberations can perhaps be brought out in questioning. If you believe it would be of help to you, I could ask Mr. Prefontaine to describe in more detail the major characteristics of the statistics we produce, or any of us could respond to particular questions.

The Chairman: Perhaps we could start with some questions. After the questions, perhaps Mr. Prefontaine could elaborate on this aspect of it.

Senator McGrand: We are interested in a group of people at a very early stage in their lives. You cannot call them criminals. You may call them, I suppose, potential criminals but they have not committed any crimes as yet. A youngster of five, eight or ten years of age, who has not committed any crime does not form part of your statistics, I gather. Senator Bonnell mentioned the other day that our vital statistics, records of births, mention the day and whether the child is a boy or a girl, but there is no information as to whether or not there was any difficulty at birth.

Some of the material we have been collecting has made mention of the "high risk infant." Things that may happen to an infant before he is born, at the time of birth, and in the few months thereafter that, taken singularly or collectively, may lead him to be a criminal.

On the back page of one of the articles I received, signed by three psychiatrists in Toronto—Dr. daCosta, Dr. Warne and Dr. Atcheson—there is a list of articles dealing with the work done on this subject in 1970, 1972 and 1974. There was not much done in the sixties.

The information we need has not been developed to the point where it could be processed as a statistic. This is our problem. You would not have such information among your statistics, would you?

Mr. Marcel Prefontaine, Director, Justice Statistics Division, Statistics Canada: Definitely not.

Senator McGrand: That is what I was afraid of.

The Chairman: This person would not become a statistic until he comes in contact with the law in some way or other, would he?

Mr. Rowebottom: He certainly does not become an observation, as a component of criminal statistics. The only way in which the type of specific inter-related incident in which you are interested could be approached is to relate the circumstances of either the birth or the childhood of an individual to subsequent events. A possible way of approaching the type of information you are seeking is to look at the criminal record of an adult, and then relate that back to the childhood circumstances.

Senator McGrand: If I were seeking information on a criminal who is 30 years of age with relation to his childhood, and what happened to him when he was eight, nine or ten years of age, would there be such information about him on record?

Senator Fournier (de Lanaudiere): If he were a member of a family of eight and were the only black sheep in the family, all having the same parents, all being raised in the same atmosphere and same society...

Senator McGrand: In the same environment.

Senator Fournier (de Lanaudiere):—then that does not seem to apply. In my opinion, it does not depend upon that.

There is a standard for any form of life, whether it is a tree, an animal or a human being. There is a normal standard. Some are geniuses, some may not be as mentally equipped, but the majority of people are sound and reasonable; they are people who obey the law, et cetera.

We were created free. We were born with certain responsibilities, however, and the responsibilities increase with age. If at a certain point in time someone decides to become an engineer, an architect or a criminal, it is his responsibility

and he must face the circumstances. If he has been working and has shown initiative, and has been willing to make sacrifices to become qualified and earn his living, he will also face those responsibilities as a result of his behaviour. This would not necessarily apply if he were sick or not mentally capable of facing the responsibilities of life. This is another matter entirely. If he has chosen freely to become a criminal, he must face the consequences of that decision. That is my opinion.

The Chairman: Senator Neiman, did you wish to put a question?

Senator Neiman: Mr. Prefontaine, I take it that you are dealing with the statistics at the federal level and, therefore, you do not go into the criminal activity of a juvenile delinquent in your statistics.

Mr. Prefontaine: Yes, we do.

Senator Neiman: Into the correctional schools, into the training schools?

Mr. Prefontaine: We have a statistical program for the juvenile courts. It is a national program which collects information, and provides this information on individuals, their characteristics, the cause of action, the decision of the court, the sentence, and so on. We are attempting now to follow the child through to the correctional stage, and we can do this if he is sentenced to a juvenile institution for observation or sentenced to juvenile probation, or if there are other measures of this nature. We have a program at the present time that provides us with statistical information on juveniles.

Senator Neiman: What is the earliest age you deal with? There is an age difference across Canada.

Mr. Prefontaine: The Juvenile Delinquents Act of the present time, if my memory serves me correctly, provides that delinquency can be committed by children as young as seven years of age. We have, effectively, some children seven or eight years of age brought into the system.

Mr. Rowebottom: We rely upon the provinces in a very large measure for our information since, as you know, this is largely under provincial jurisdiction. We work very closely with the provinces in the production of the statistics which relate to the country as a whole, and to each of the provinces thereof.

Senator Neiman: Are you satisfied that you are receiving a reasonable correlation between provinces, or do you feel that some provinces give you far more information, or deal with certain cases in different ways?

Mr. Prefontaine: Not at the present time. Maybe I should state, however, that there is a federal-provincial advisory committee on justice statistics and information. This committee was created in June 1974. We have had a number of meetings already. One of the major objectives of this committee is to achieve national standards for reporting, and all of the provinces and the Northwest Territories and the Yukon have accepted the principle of some standardization.

Statistics Canada plays a co-ordinating role in developing compatibility for systems with all of the provinces. So we deal with each province and territory in order to develop with them information systems which will produce not only information for management purposes in the provincial departments, but also information which will

provide Statistics Canada with figures which in the long run we hope will satisfy all needs, including information for the enlightenment of the public and information for research purposes as well.

In this context we are presently negotiating with all of the provinces. With some of them we have completed the program, and it is providing us with adequate information. We hope by the end of this fiscal year we will have our program for juveniles—that is, the juvenile court program—completed. However, we lack resources to develop the corrections area which gives us information on the juvenile after he has been dealt with by the courts, and this is where there is a serious gap. That is due to the lack of resources. We have not been given adequate resources to tap that source of information.

I do not expect it will be before the next fiscal year that we will be able to tackle that area. We have no information on juvenile probation at all. We have a partial program on juvenile institutions, but it covers only training schools. Of the ten provinces and the two territories, only five areas have training schools. So with respect to all of the other juvenile institutions, we do not have even those in those other areas.

For the present we have had to set priorities, and we have even had to “marquer le pas”; that is, to interrupt the training school program because of lack of resources. So we are only collecting the forms, the reports from the provinces, and we cannot even process those to provide users of the statistics with information on this important area.

Senator Norrie: Do you cooperate with medical departments in psychiatric institutions in terms of your statistics?

Mr. Prefontaine: We have, jointly with the Health Division of Statistics Canada, some informal consultation. I do not remember how they call it. It is medical justice, but there is a special term for it which has skipped my mind. We have developed an informal consultation process. Alberta appears to be setting the pace in relating health or psychiatric information to criminal justice information.

Senator Phillips: Do you keep any classification of juveniles? By that I mean the various classifications which psychologists use.

Mr. Prefontaine: No. The only information we have is that a child has been referred to a psychiatric institution for observation or treatment when dealt with by the courts. We do not know what happens to him after he has gone to that institution.

Senator McGrand: A moment ago we were speaking of the family of eight, with one child different from the rest. I should like to point out that they all had the same father, the same grandfather and the same general environment. Each of them, however, has different experiences from the moment he is born, and there is no way that you can put those experiences into statistics, is there?

Mr. Rowebottom: Yes, that is correct.

Senator Fournier (de Lanaudière): It is true that no two people are the same, but that does not destroy the fact that people have responsibilities.

Senator McGrand: A child at birth is not a responsible being. He is certainly not responsible for the things that

happen to him. If something happens at birth, or when he is three or six months old, to change his personality, a person cannot be held responsible for that.

Senator Fournier (de Lanaudière): If he becomes sick or insane he must be taken care of. He certainly cannot be punished, but he might be cured.

The Chairman: Referring to the statement that there might be one black sheep in a family of eight, all of whom have had the same home environment, it occurs to me that the pre-birth environment might not be the same. The eight children might have been born under quite different circumstances with quite different pre-birth environments.

At our last meeting Senator Bonnell asked what information of that type was available. Is it recorded? It would not be recorded under “justice,” but it might be recorded under “vital statistics” or under “general health.” Do you have any information on that? Do you collect any information of that type at all?

Mr. Rowebottom: The only information I am aware of is what Dr. Bannister referred to when he was testifying.

Senator McGrand: Is it fair to say that the information you have is what is recorded on the person's birth certificate?

Mr. Rowebottom: The information on the birth certificate does not in any way indicate the characteristics of the birth; not at all. The only information of a related character available to us is from our hospital records where the birth is recorded. But again that is not information in the type of detail which would indicate the particular circumstances of the birth. It is not the type of information you would be interested in.

Senator Norrie: Do you know any countries in which such information is tabulated or recorded?

Mr. Rowebottom: No, I do not, senator.

Senator Fournier (de Lanaudière): It is impossible.

Senator Norrie: There is no such thing as “impossible.”

Senator Fournier (de Lanaudière): Mr. Chairman, how could we have statistics on something which people could not divulge because they would not even know about it. Humanly speaking, so far as I am concerned, it would be impossible to go that far.

Senator Phillips: What about school records?

Mr. Rowebottom: The amount of information available on almost any subject is a function of the priorities that society is prepared to allocate to making that information available, and of the resources it is prepared to deploy for such purposes. If it were important enough to require the type of information you are talking about, then it could be obtained from doctors, from hospitals and from families, but it is a function of the determination of society over a long lead time to acquire such information. It is expensive, it is difficult, and it takes skilled resources and significant amounts of time before such bodies of information can become available to support the type of investigation that you are embarking upon.

Senator Phillips: I was going to ask about school records, particularly of those who have failed a year or dropped out of junior high school. Would we find it very difficult to obtain information in that regard?

Mr. Rowebottom: Again, we do have information about the number of children who drop out of the school stream at various points, but the characteristics about which we have such information, such as age and sex, and the grade at which the child left school would be quite insufficient to support the type of investigation that is being talked about here, because you are going back to the characteristics of the parents. The type of information, of a sociological nature, that is more readily available would be that which describes the socio-economic neighbourhood in which the person moved from youth to teenage, and so on through to adulthood, so that the social environments can be compared.

A good deal of this type of information could be derived from sets of records that exist. An obvious example of this is a census. We would have to know something about the neighbourhoods in which people grow up, and it would then be possible to relate those neighbourhoods to the neighbourhoods of those who get caught up in the toils of the law in one way or another. That, again, however, is not related directly to the problem you are focusing on.

The Chairman: We are focusing on the child at an early age, before his behaviour patterns have crystallized, so that any potentiality for crime, or obvious potentiality for crime, can be recognized and so that something can be done about it before it is too late. Some countries have done research along these lines, and obviously they need statistical information to be able to carry on the research involved.

Mr. Rowebottom: I judge that some individuals have become interested in it.

The Chairman: Even if we employed someone to research this, he would have to get the information somewhere, so that the information would have to be collected from provincial, federal and hospital records, would it not? Somebody must be collecting it, or it would not be available to use for research.

Mr. Rowebottom: Indeed it would not, and my hypothesis would be that it does not exist now in Canada in any significant volume. It would also be expensive, difficult, and time-consuming to create it. Let me just check with my two colleagues on that, and see if they agree with my assessment.

Mr. Prefontaine: Yes. There are two ways in which it could possibly be done. One would be to get a project started right now, under which you would take a sample of Canadian babies and follow it up over a 30-year period. We would then have statistical information after 30 years. The other method is to take people who are at present 30 or 40 years of age, who are actually known criminals, and try to work back, tapping all administrative records relative to the different aspects of their lives—I am referring to educational and health records and so on. We would have to go right back to their birth. This is where the cost would be beyond reason, I believe. It would be very difficult to tap all those records. You would need an army of people to check the school and hospital records, and to check the environment in which those children, depending on the sort of survey you wished to carry out, grew up.

Mr. Rowebottom: Our concern is pointed much more towards what is happening in society. We want to know what crime is being committed, in what volume, of what character, and by whom. We want to know what happens to such people, what society does with them, what

resources society uses in coping with criminals, for how long it commits them to institutions, what happens to them when they leave those institutions, what the distribution of sentences is that the courts hand out to people who commit crimes of different types, and so on. These are the types of issues that we are addressing ourselves to, and the causal relationship between a certain type of birth delivery, or pre-birth incidents, is one which has thus far been well beyond the scope of our concern.

Senator Phillips: Mr. Chairman, Mr. Prefontaine mentioned the possibility of starting a study of a group of children from the time of their birth and carrying it through to the age of 30, in order to establish information of this nature. How big a group would he suggest it should be?

Mr. Prefontaine: I am not a sampling expert. I would have to check with the experts within the bureau to see what size of sample we would need, and what characteristics we would be tapping. I cannot give you that information. Maybe Mr. Reed, who is a researcher, might have some idea of what could be done in that regard.

Mr. P. Reed, Assistant Director, Justice Statistics Division, Statistics Canada: A very quick estimate and I emphasize the word "estimate"—would probably be one starting with 10,000 or a group even larger than that. There has been a major study under way for some time in England on the correlates of educational performance. They have taken a large number of children, looked at family characteristics to start with, and watched how they progressed. That study has been very costly, has involved some 10,000 to 20,000 children, and will last for something in the order of 20 years, I understand, with acquisition of further information almost every year on each child. The cost would be in the many millions of dollars.

Senator McGrand: You were mentioning statistics and how hard they are to get. I know it is practically impossible in Canada with our federal, provincial and municipal systems, to get this information. However, in Denmark, according to a study made there, out of 1,682 breech births, 25 per cent of those children failed in one or two grades before they got to Grade IX. This indicates that breech births do cause a certain amount of damage to children. Now, the authorities concerned must have had this information, or they would not have been able to present it in that form. They must have been doing some work on it. Also, of the 16 most dangerous criminals—murderers—in Denmark, 15 had a tough time when they were born. This must be recorded somewhere.

If we want to know today something about the childhood or babyhood of some of our criminals, the best way to get it is to go to the men who are doing research on criminals, such as Barker, Boyd, or Stokes. They know everything that it is possible to know about the criminals they are dealing with. They have taken a young man of 20, a murderer, and have gone back into his childhood to find out everything they can about him. They are the people to go to at the present time. We could set up in Canada a system for recording more and more about children. I do not expect this information at the present time because it just does not exist.

Mr. Prefontaine: In that field it would be very expensive to get started on a program of this nature.

Senator McGrand: It is not essential to our inquiry at the present time. We can get more information about the

criminal from talking to Boyd or Barker than from any other source.

Senator Fournier (de Lanaudière): You are talking about 10,000 or 20,000 people, but let us make it a million. After 1,000,000 people there will be one other who has his own personality; to a certain extent, he is different from every other person. In my opinion, if we are working on statistics of criminality, that will lead us nowhere. It is not a matter of statistics. I return to my first approach. It is a matter of responsibility. It is not a matter of birth, chromosomes or anything else. It is a matter of responsibility. Is he responsible for the crime he committed, or is he not?

Senator Norrie: That is not the point at all.

Senator Fournier (de Lanaudière): When you say it is not the point you are right, but what we are discussing leads ultimately to making it the point.

Senator Norrie: No, it does not.

Senator Fournier (de Lanaudière): That is what I understand.

Senator Norrie: We are talking about where that man as a child shrugged off his responsibility, and why he did so.

Senator Fournier (de Lanaudière): At seven years of age?

Senator Norrie: No, at one year, seven months, pre-birth.

Senator Fournier (de Lanaudière): There is no possible responsibility there.

Senator Norrie: That is the point we are discussing.

Senator Fournier (de Lanaudière): In my opinion, responsibility is an expression of freedom, freedom is an expression of the use of intelligence and will, and at one year of age it is just instinct.

Senator Norrie: But it just does not happen to be the point.

The Chairman: I should like to ask a question about the cost. If we start from the premise that we are interested in focusing on the causes of crime, then we already know many of the causes—poverty, poor environment, drugs, poor upbringing, deprivation, and so on. However, there are other causes that we do not know about, such as those attendant at birth, like breech birth and pre-birth conditions, to which Senator McGrand referred.

Mr. Rowebottom, you have been dealing with realities, with situations as they arise, and recording them in statistics. Apparently crime is still increasing. All we are doing is reacting to situations as they arise. We are not doing too much to get at the causes of crime. There is certain information that Senator McGrand and the committee are trying to zero in on.

Mr. Prefontaine, you told us earlier that there is a provincial-federal committee, and that you agree among yourselves as to what information you want. If you wanted a little extra information, such as that about the type and conditions of birth, and possible psychological damage, I do not understand why it would cost a great deal more to start collecting it. If you never start, then you will never have any such information in Canada. Even if you started tomorrow, then in 10 or 15 years you would at least have a body of statistical material that might be useful. If you got agreement through the federal-provincial agency to collect

this additional information, would that cost all the money you say it would?

Mr. Rowebottom: I am not familiar with the type of information that may now exist in the files of the medical fraternity about difficult births. I am sure that the medical profession has a body of direct data which it uses for purposes of medical experimentation, research and analysis, which describe the circumstances of birth for some percentage of total births, derived from clinics and hospitals. I am reasonably sure that some fairly intensive attempt to gather that information together would probably be successful. But it seems to me that you are asking a quite different question. You are asking for the correlation between that type of information and subsequent events.

The Chairman: I do not think we are asking you to make the correlation. What the committee is asking is that you collect the data so that other researchers can use it and make the correlation.

Mr. Rowebottom: The data that would be an essential element, the data base you would require for such a correlation, would relate to any criminal or non-criminal event which subsequently occurred involving those particular individuals. Therefore, what you are asking for is the development of a longitudinal data base extracted from a cohort of the population; that cohort derives from an evaluation of the circumstances surrounding birth. That is where it would be exceedingly expensive in time, skill and money. It is not just the development of the data base surrounding the original circumstances, but it is that data base related to one which describes subsequent events in the lives of the individuals involved. You are talking about the development of a data base through time in which subsequent events of a criminal nature are related back to the circumstances of birth, or environmental circumstances related to birth. That is where the time and money would be involved.

The Chairman: I would think all that would be needed for research purposes would be a sufficiently large sample. If this were limited to one province instead of the whole population of Canada, would that reduce the expenditure?

Mr. Rowebottom: It would reduce the expenditure, but it would probably add some complications. It would increase the degree of error associated with the measurement. We are a very mobile population. People born in one province spread out across the country at varying ages. A person born in British Columbia may be residing in any one of the other provinces, so the process of tracking that individual through time becomes difficult and expensive.

The Chairman: Mr. Reed, would you like to add anything to this matter?

Mr. Reed: There is another approach which would give you information and in turn tell you whether or not it is worthwhile to spend a great deal more, and that is to identify a list of individuals who have shown a consistent criminal behaviour, starting at any age you want and continuing on to any age you want with that list, assuming policy questions regarding the release of those names are solved. If you take that list of names and go looking for information on, for example, birth defects or birth trauma, and whether or not it existed in the case of each of those individuals, that may be another approach. In other words, rather than starting with the birth information and later through a long period of time trying to identify the occurrence of crime, take criminals, people who have been iden-

tified as criminals, and go backwards; go to family records and school records of those people.

This is probably not something which Statistics Canada could do, simply because of the guidelines and rules as to the kind of work we can carry out. We could participate in some ways in it. This, I believe, would be one of the most inexpensive ways of starting to acquire reliable statistical information on the linkage between the kinds of factors you see as important, and the occurrence of criminal behaviour.

The Chairman: How large a number would you start with in this line of research? Would you think 1,000 would be large enough? Do you think you would get enough information to correlate and show trends out of a group that size?

Mr. Rowebottom: You would be caught up in circumstances of acts and information that would be available for each and every one of them. Historically, you would look back, and how much you would find would be uncertain.

Mr. Reed: You may find, starting out with a list of 1,000 names, that you would only be able to get information on 200, or 39 or perhaps 700; I do not know. Again, sample size is determined by your analytic intent; the purposes of the analysis. So, I cannot really give you a simple answer to that question.

I would say simply and rather vaguely that several thousand would be necessary in a sample. Again, the costs would be much less than what we have been speaking about for these other kinds of projects.

Mr. Rowebottom: I would argue that the probability of reliable information being available about an event which occurred 20 years ago to a known criminal would be very low.

Senator McGrand: If you were to search for information respecting a criminal named John Doe, aged 20, it seems to me that the only place you will find information as to his early life is not in school records, but in the records of the hospital where he was born. If it was a well organized hospital, there will be information available with reference to the radio between the fetal pulse and the mother's pulse. Was the baby's pulse more rapid than it should be? Was meconium present before he was born? Meconium is simply the bowel movement before the baby is born and during delivery, which is always evidence of an infant in distress. That is always recorded in a good hospital.

Another significant point is whether the baby cried incessantly after he was born. These are important matters. The only place from which you will obtain such information will be the hospital at which he was born.

I am just offering my thoughts as to how this information may be gathered.

Mr. Reed: This kind of work would really be detective work; not so much statistical work.

Senator McGrand: I imagine that anyone who takes an interest in a criminal and says, "I am going to find out all I can about this man," will go back and search the records. We must go to these people and talk to them. There is no use talking to people at Statistics Canada, when they do not have the statistics.

Senator Norrie: You cannot tell me that Dr. Atcheson in Toronto does not have a lot of information like that.

Senator McGrand: Yes, from all the people he is interested in.

Senator Norrie: I would imagine he would have information about every month of their lives. He is dealing with criminals and disturbed people, and going right back to their childhood. He is a man of renown.

Senator Fournier (de Lanaudière): Mr. Chairman, if it were possible to go into the files of Dr. Goldbloom in Montreal, who was certainly one of the greatest in his line of work, we would find a wealth of information. I am sure his files have not been destroyed. This is detective work, and it has been done by a specialist. I happened to know Dr. Goldbloom very well, and know what he was doing here in Canada, the United States and even in Europe. He was a man who could assess the stature and characteristics of a person, and no mistake.

I would imagine that your department would need permission to conduct this type of a survey because the records are confidential, but they would very helpful indeed. The records of the doctor you just mentioned in Toronto would be very helpful as well, and I am sure there are others we could speak to.

Mr. Rowebottom: That would more probably be the responsibility of some other department than Statistics Canada if, indeed, it were of any advantage.

The Chairman: It may be the Department of National Health and Welfare.

Mr. Rowebottom: Yes.

Senator Fournier (de Lanaudière): And they could transfer the information to your department.

The Chairman: Any further questions?

Senator Fournier (de Lanaudière): I move we adjourn.



Government
Publications

FIRST SESSION—THIRTIETH PARLIAMENT

1974-76

THE SENATE OF CANADA

PROCEEDINGS OF THE

STANDING SENATE COMMITTEE ON

HEALTH, WELFARE AND SCIENCE

The Honourable C. W. CARTER, *Chairman*

Issue No. 17

THURSDAY, JUNE 17, 1976

Fifth Proceedings on:

The Study of the feasibility of a Senate Committee inquiring into and reporting upon crime and violence in contemporary Canadian society.

(Witness—See Minutes of Proceedings)

THE STANDING SENATE COMMITTEE ON
HEALTH, WELFARE AND SCIENCE

The Honourable C. W. Carter, *Chairman.*

The Honourable M. Lamontagne, P.C.,

Deputy Chairman.

AND

The Honourable Senators:

Argue,	Goldenberg
Blois	Inman
Bonnell	Langlois
Bourget	Macdonald
Cameron	McGrand
Croll	Neiman
Denis	Norrie
*Flynn	*Perrault
Fournier	Phillips
(de Lanaudière)	Smith (<i>Queens-Shelburne</i>)
	Sullivan—(20)

**Ex officio* member

(Quorum 5)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate of Canada, Thursday, 18th December, 1975:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator McGrand, seconded by the Honourable Senator Eudes:

That the Senate considers it desirable that a special committee of the Senate be established at an early date to inquire and report upon crime and violence in contemporary Canadian society.

And on the motion in amendment thereto of the Honourable Senator McElman, seconded by the Honourable Senator Carter:

That the motion be not now adopted but that the subject-matter thereof be referred to the Standing Senate Committee on Health, Welfare and Science,

After debate,

In amendment, the Honourable Senator Asselin, P.C., moved, seconded by the Honourable Senator Choquette, that the motion in amendment be amended by removing the period at the end thereof and adding the following words:

"and that the Committee be instructed to look into and report upon the feasibility of a Senate Committee's inquiring into and reporting upon crime and violence in contemporary Canadian society and that, if the Committee decides that such a study is feasible and warranted, it be further instructed to set down clearly how, by whom, and under what precise terms of reference such a study should be undertaken."

After debate, and—

The question being put on the motion, in amendment, of the Honourable Senator Asselin, P.C., seconded by the Honourable Senator Choquette, to the motion, in amendment, of the Honourable Senator McElman, seconded by the Honourable Senator Carter, it was—

Resolved in the affirmative.

The question then being put on the motion in amendment of the Honourable Senator McElman, seconded by the Honourable Senator Carter, as amended, it was—

Resolved in the affirmative."

Robert Fortier,
Clerk of the Senate.

Minutes of Proceedings

Thursday, June 17, 1976

(21)

Pursuant to adjournment and notice the Standing Senate Committee on Health, Welfare and Science met this day at 2:10 p.m., the Chairman, the Honourable C. W. Carter, presiding.

Present: The Honourable Senators Bonnell, Carter, Croll, Denis, Fournier (*de Lanaudière*), McGrand, Neiman, Norrie and Smith (*Queens-Shelburne*). (9)

Present but not of the Committee: The Honourable Senators Burchill and McElman. (2)

The Committee resumed consideration of its Order of Reference dated December 18, 1975, "that the Committee be instructed to look into and report upon the feasibility of a Senate Committee's inquiring into and reporting upon crime and violence in contemporary Canadian society and that, if the Committee decides that such a study is feasible and warranted, it be further instructed to set down clearly how, by whom, and under what precise terms of reference such a study should be undertaken".

The following witness was heard:

Dr. E. T. Barker, Consultant,
Mental Health Center (*Oak Ridge*),
Penetanguishene, Ontario.

Dr. Barker made an introductory statement after which he was questioned by Members of the Committee.

On motion of Senator Bonnell, the Committee *Agreed* unanimously to report to the Senate that it had investigated the feasibility of a Senate Committee inquiring into and reporting upon crime and violence in contemporary Canadian society and *Agreed* that it is not only feasible but necessary to carry out such an investigation.

At 12:10 p.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Patrick Savoie,
Clerk of the Committee.

The Standing Senate Committee on Health, Welfare and Science

Evidence

Ottawa, Thursday, June 17, 1976

The Standing Senate Committee on Health, Welfare and Science met this day at 10 a.m. to look into and report upon the feasibility of a Senate committee's inquiring into and reporting upon crime and violence in contemporary Canadian society.

Senator Chesley W. Carter (*Chairman*) in the Chair.

The Chairman: Honourable senators, since you have already met our witness, Dr. Barker, there is not much need for a lengthy introduction, but I will just say again, for the benefit of my colleague who came in with me, that our witness today is Dr. E. T. Barker, a consultant at the Mental Health Center Oak Ridge Division, of the Ontario Ministry of Health, at Penetanguishene, Ontario.

Dr. Barker, do you have a presentation that you would like to start with, before we come to questions?

Dr. E. T. Barker, Consultant, Mental Health Centre (Oak Ridge), Ontario Ministry of Health, Penetanguishene, Ontario: Yes, Mr. Chairman, I telephoned you a week or two ago about some of my misgivings, having read the transcripts of the last four sessions of this committee, and also wrote to you about some observations which I thought might expedite our discussions today. Unfortunately, the letter did not arrive, although it was mailed on June 11. I think I should explain my reservations, perhaps reading what I wrote, and carry on from there.

I simply wrote to you saying that I had had an opportunity to review the transcripts of this committee's deliberations, that I looked forward to meeting with you today, and that I discussed with you on the telephone the regrettable fact that neither I nor any psychiatrist that I know, who deals with criminals and disturbed people, has been able to go right back to their childhood and obtain information about every month of their lives. As Dr. Atcheson told me when I spoke with him about this matter, "We all have our hunches but it is exceedingly difficult to get reliable data."

I felt concerned that I was coming here under false pretences, having read in the proceedings of your fourth committee meeting that you hoped to obtain from one of us at Penetanguishene data about the early life and background of many of our dangerous patients. We no doubt should have, though we do not have, extensive data about their early birth and development, which I felt you were looking for.

I wrote: In anticipation of our meeting together, I thought I should set out the following tentative observations and opinions regarding the matter before you, in the hope that it might expedite discussion when we meet. Moreover, I am writing on Canadian Society for the Prevention of Cruelty to Children rather than hospital stationery so that my bias in these matters

will be perfectly clear. I have just recently organized this society, the first objective of which is to

"gather existing information relating to the nature and extent of child abuse, including both physical and psychological aspects, potential consequences, and possible means of reducing its frequency."

Let me say first of all that I cannot help but be very greatly impressed by the incisiveness and breadth of knowledge reflected in the discussions of you and your Committee members on this matter. Perhaps I have become too used to more fuzzy-minded psychiatric discussions! What comes through from the proceedings, in addition, is the great tenacity with which Senator McGrand has pursued this most important matter. In my experience, such singleness of purpose is both rare and admirable.

As I see it, there are two important reasons why the broader motion passed by the Senate needs to be restricted in scope, as your Committee has quickly done. The first as Finsten and Tait note in their paper "The Causes of Crime and Violence: Influences in Early Childhood," is that "research into probable causes stemming from the first few years of a person's life has received less analysis than other areas." Secondly, and of greater importance, in my opinion, it is only through more extensive knowledge regarding causal factors occurring very early in a child's life (pregnancy, birth, the first two or three years) that preventive programs can be developed. As has been known for many years now, it is in these early years that "the die is cast" or "the concrete hardens".

This is the paragraph that I was hoping there might have been some review of earlier. It is a rather closely worded argument.

I argue for a concerted effort to obtain knowledge upon which to base preventive programs rather than early remedial programs for the following reason. At best, we are likely only to be able to identify a reasonably large number of children who are "at risk". That is, they will have been subjected to a series of factors demonstrable in the early years which make them more likely to become disturbed or violent or criminal as adults. We know that it is from this "at risk" group that the majority of our violent criminals will arise. What will most certainly be the case, however, is that not only will some children in this "at-risk" group not become disturbed or violent adults, but a few dangerous criminals will almost certainly arise from the population not previously identified as "at risk." What we are faced with, then, is providing some type of "therapeutic" intervention [if we are following the attack of early remedial intervention] to a very much larger number of children before they have done "much wrong" (a process offensive to civil libertarians) while at the same time pursuing a policy which

would stretch even thinner the already scarce resources which are presently inadequately coping with the treatment of those who have clearly established themselves as dangerous or disturbed.

Why should a Senate Committee inquire into and report upon factors occurring early in a child's life which may later lead to disturbed or violent behaviour?

Because it is of such vital importance? Yes.

Because the Senate can select a small group of competent, concerned lay people to maturely review from a common-sense point of view the findings of highly specialized professionals from a wide range of disciplines? Yes?

Because the stature of the Senate of Canada will be a powerful force to evoke from the best minds in each discipline an up-to-date summary of the known data in that field? Yes.

Because a Senate Committee already has the resources (the Queen's printer) to publish its proceedings as a matter of course? Yes.

Because the Senate is perhaps the only institution in Canada secure enough to call before it witnesses who may present evidence which we as a society are very reluctant to hear? Yes.

To illustrate this last point, I append an example given by Dr. Lawrence Kubie in which he points out that

"we find ourselves up against taboos which have been entrenched for generations in laws, traditions, religious rituals and taboos, in family life, and in our political and economic system".

Additionally, I refer you to the April 6, 1976 letter from Drs. Warne, Da Costa, and Atcheson to Senator McGrand in which they state

"perhaps the roots of our own violence are something that we do not care to know about".

If a special committee of the Senate of Canada is not established to obtain submissions from, or hear in person, the best minds in each of the wide range of relevant disciplines—anthropology, sociology, psychiatry, pediatrics, to mention a few—to elicit concise statements regarding factors occurring during pregnancy, birth, and the first three years of life which can lead to criminal, violent, or other disturbed behaviour in adult life, a unique opportunity will have been tragically lost.

I sent those remarks to your chairman, and they will arrive in due course, and in my remarks here I will be most interested to speak with those amongst you, and I think there are some, who rather violently disagree with what I am proposing here and who perhaps disagree with the whole notion of a Senate committee being established to look into these matters.

Perhaps I have said enough for now.

The Chairman: Thank you, Dr. Barker.

It is unfortunate that Dr. Barker's letter, although mailed on June 11, still has not arrived. However it probably will arrive some day, and when I get it I shall have copies made and sent to all members of the committee.

Senator Bonnell: Would it be possible to have a copy attached to our proceedings of this morning?

The Chairman: Well, the essence of the letter is already in the body of the transcript as part of Dr. Barker's presentation. I shall now ask Senator McGrand to lead off the questions.

Senator McGrand: Well, Mr. Chairman, I have many questions I would like to ask our witness, and I am sure everybody else is in the same situation, so perhaps we will not have time to get all our questions in. However, just to go back to something that happened quite recently in Edmonton, there was the case of a seven-year-old boy who killed another child, aged 2½, and there is evidence that he was involved in another murder attempt of a three-year-old. So here you have a boy of seven years of age who is in school and who is under the observation of teachers, and yet this came as a sort of bolt from the blue; he was not recognized as a potential psychopath. You did not get a chance to study this case, but I am sure you have studied the case of many others. How would you go about assessing the potential of children to commit crime?

Dr. Barker: Senator McGrand, I think one of the inaccuracies in the general opinion about the dangerous criminal, particularly the insane criminal, with which I have had so much to do over the past 10 years, is that in some way he is very, very different from you or me. I have not found that to be the case. When I get to know these patients, when I am involved in their treatment programs for five, six or seven years or just study them for 60 days prior to court appearance, I am struck far more with what is similar in their make-up to the make-up of other children or other persons, than what is dissimilar. That fact always seems to be forgotten. As I see the situation, that boy out West was not "picked off" early, less because the facilities were inadequate to pick him off than because he is not exceedingly different from half a dozen or more kids on his block. We are dealing with something endemic in society, and the question should really be: Why is it that only one boy did this? From my experience with these kids the frightening aspect is why it does not happen much more often. The seeds are there and it seems that it is those seeds that are being generated early in children's lives. I personally have become disenchanted with what is now at Penetang, probably the most intensive treatment program for these people after the fact. I want to go back to a much earlier stage in order to prevent such situations arising in the first place.

Senator McGrand: Do you mean we should have a better screening? With respect to tuberculosis, for instance, years ago we put the patients in sanatoria in an attempt to cure them. Now people travel with x-rays and everything else in an endeavour to locate the tuberculosis before it becomes evident. I take it that you would like a better screening of all children.

Dr. Barker: I am afraid I disagree. In my opinion, if we were to initiate a program of very intensive psychological testing and psychiatric interviewing of all Grade I children throughout the country, with our present knowledge and the knowledge we will have over the next 20 years, we would not be able to seriously affect the volume of violent crime or disordered behaviour that generates out of that group. In my opinion, we simply must go back earlier than that.

Senator McGrand: Yes, I know. The cause can be before the child is born, during the birth period and 24 hours after the child is born.

Dr. Barker: And during the next two, three or so years. Since the turn of the century Freud and others, with whom we may disagree, have been saying that the "die is cast" then, and if you wish to make changes after that you must use a hacksaw on a piece of metal which is already solidified.

Senator McGrand: Yes, but the thing is, what would be the four or five cardinal symptoms for which you would look in a disturbed child before he gets into trouble?

Dr. Barker: I have testified perhaps a hundred times at murder trials, either for or against insanity, as it is defined in section 16 of the Criminal Code. On half a dozen of those occasions the offenders have been patients who have killed within a week of having had a psychiatric examination. I am not trying to whitewash the psychiatric profession, but I have put myself in the shoes of the psychiatrist who examined the patient a week before he killed someone, and in one instance a day before. I have asked myself: Could I have done better? Would I have locked him up? I have had to say no, not to protect my confrères. Our capacity to predict in the individual case is simply not good. True, there are some cases which differ from that. If a man has a delusion that he is being persecuted, has a gun and is very disturbed, we lock him up. We certify people under the Mental Health Act under those conditions. However, by and large, this type of behaviour is not easily predictable the day before. That is my experience. Perhaps there are experts who can do it. However, I have not met them and do not know them. All I can say is that there is a seething mass of violent and near-violent people, some of whom act out. The surprising thing to me is why it is that more people do not cut loose the forces that are contained within them for violence. In my opinion, the factors in our society which generate those forces early on should be investigated.

Senator McGrand: One thing that comes up time and time again is that people think that this criminal tendency is inherent. I have never put too much stock in this genetic thing. What is your opinion?

Dr. Barker: Well, there was a big thing about XYY chromosomes a few years ago. We had everyone in Penetanguishene surveyed for that, and we found that three out of 300 patients had XYY chromosomes.

Generally, I would say, with some modifications, we are not dealing with problems of genetic inheritance. I might add here that there is a basic flaw with retrospective studies, like going to our patient population and trying to find XYY chromosomes, or trying to find which of our dangerous patients had forceps delivery or were premature. What you find, and what has been found countless in delinquency studies, is that if you take a normal population you will find very close perhaps the same proportion of people who had forceps deliveries or who were premature.

One must knock on doors and take a random survey of people, not just the diseased population, in trying to find correlates early on.

Senator Neiman: You are stressing the efficacy of preventive rather than remedial programs, and you are talking about starting it at birth or in the first three years. How do we go about setting up those programs? What is your idea of where we can zero in and really identify it at an age and stage you think is important?

Dr. Barker: My idea on that is exactly what you, as a Senate committee, have focused yourselves on, and I hope will be proposing to the Senate at large, which is simply to start with an inquiry focusing on the pregnancy, birth and the early years of life, and what factors might have to do with disturbance and crime later. All I am saying is that it is too late for later programs. I do not think we have the information or knowledge at the present time. What is lacking is the impetus which can be provided by a group such as yourselves, or a special Senate committee, to say, "We must start looking back there." At that point, in those hearings some ugly questions will arise about factors in our society which may be contributing—*may be contributing*—to violence in our society.

I do not think we have the answers now, other than saying that more and better prisons, more and better hospitals like Penetanguishene, and more psychiatrists to treat more Grade I pupils is not, in my opinion, the answer. The answer is the direction which you, for some reason, started to get focused on. That is my excitement about what you are almost into.

Senator Bonnell: What do you think of the possibility of hypnosis, in bringing people back to their early days of childhood and seeking what they remember, to find out what the problem or trauma might have been? They tell us that in hypnosis you can bring them back even to the womb. If you go far enough, you might even bring them back far enough to believe that reincarnation is really the thing, that people have other lives and perhaps were influenced by the life before. Have you any comment to make on that?

Dr. Barker: I have had personal experience of having hypnotized some dangerous people myself. I have spearheaded over the last 10 years at Penetanguishene programs using very special drugs to try to discover early, unconscious, events which might have been contributory to later violent behaviour—such as the use of scopolamine, tofranil—Jexamy and LSD. That material has now been published in the *Canadian Psychiatric Association Journal*. The standard use of truth serum, (so-called) sodium amylal, and Methedrine; and the use of group hypnosis within Oak Ridge we practised in 1966 for the purposes you are suggesting.

Violent acts on the part of adults do not occur as a result of a single or two or three tragic and startling events early in life. A personality is developed as a result of the repetitive experiences early in the family life and perhaps some experiences during pregnancy and birth, about which very little is known (and about which this committee has started talking, well in advance, I think, of the majority of the scientific community,) rather than single, isolated events. If these violent acts were attributable to a single isolated event, the approach of hypnosis and drugs might have some impact in unlocking the event, and that has been tried with battle neurosis, and so forth.

Generally, we are dealing with people where the mold was wrong to start with. The concrete was poured in and set wrongly. That mold was created over two or three years of repetitive daily experiences in the child's early life—perhaps with no father present; perhaps with very abusive parents—on a repetitive basis, not just one great big battle in the family, not one instance of this or that, or anything else, which might leave some hope for the approach of getting in and getting at that one event. We are dealing with the milieu of the formative years.

Senator Bonnell: Do you feel the breakdown of the family unit in this day and age is a factor? In my time, if a couple in the community were divorced they became outcasts. Extramarital sex was taboo. Today, about one or two in ten are divorced and perhaps three in ten are separated. Extramarital sex is still not the best thing to do, but it is not as taboo as it used to be. Are these changes in attitudes having any impact on family life, love life, the home life? Are we going to have more criminals in the future because of these changes in attitudes?

Dr. Barker: It is my view that it is in that direction that we ought to begin asking serious questions, such as the effect on children of more relaxed divorce laws and who is presently arguing for children in that particular debate. Those are questions which need to be asked. They are issues that very quickly move into public policy.

We must start the focus back in the early years and start it as vigorously as possible. I do not know what particular things will turn up. I repeat, I think some of them will be offensive to the citizenry of this country and will not be raised lightly by elected representatives. That is a major reason, in my mind, why the Senate is the place to call witnesses who may well give testimony that some people will find offensive. We need an autopsy table, just as medicine progressed by operating on its failures, by the postmortem. Our society—and some people have been writing about this for 20 or 30 years—has no autopsy table for its social institutions, for its public policies. What are the effects on its own people of particular policies? I have often thought that when a jury in a murder trial brings in a verdict of not guilty by reason of insanity, in general it is thought that the culprit has been caught and he will be put away and cured. That is not true, on many grounds. You do not have the culprit; you have the symptom. The act of a husband shooting his wife is the end of a long series of events. You may have to indict poverty and a wide spectrum of things, many of which are not being talked about yet. There is no arena for public debate in this area. That is what I argue for. There is not enough attention focused on these things so that society can re-examine its policies, its institutions, and the cost it is willing to pay for certain policies. I think there is a correlation. As one sociologist put it, it is as though we oppose breakdown products but we favour catabolism. That is an overstatement, but it is in that direction that I think we need to begin to ask questions.

Senator Bonnell: Again dealing with my own experiences, I started out some 27 years ago delivering most of the babies in the homes. There were never any problems; everything was fine. The whole family was involved; even the grandfather was there boiling a pot of water on the stove. Then people started moving to the rural hospitals to give birth, and again there did not seem to be many major problems; everything seemed to go reasonably well. However, when you go into the maternity wards of some of the hospitals of our larger cities, you hear mothers screaming, see nurses running, and what seems to be great confusion. It no longer seems to be a very natural event. They always seem to be administering anesthetics, delivering babies by caesarian section, and everything else. Is this whole thing going to be a cause of more crime in the future, with birth not happening in the natural way as it did years ago? Are we going to have to go back to more natural birth?

Dr. Barker: I believe it is hard to say with precision, "Yes, that will cause more crime," or, "It will not." It is clear to say we must be looking at those things. We must

do as someone did in the last two weeks, raise some totally ugly questions publicly.

We get into euthanasia which is an abhorrent political issue. The time has come when we must face those abhorrent questions and debate them. The question of whether it is reasonable to preserve the life of an infant badly damaged physically at birth, who perhaps requires multiple operations and hospitalization for the first year of its life, was raised publicly by some medical specialist within the last couple of weeks at a conference. I think that takes a good deal of courage. It seems to me that we need an arena (and what better or safer one to start in than the Senate?) to have those questions raised, and possibly in an ongoing way. I believe that behind those questions, which are too horrendous to ask, lies much of the trouble.

I appended to the letter to Senator Carter a quotation from Dr. Lawrence Kubie who argues about religious taboos and things entrenched in law. He is a psychoanalyst. Of course, he believes that everything starts with sex and aggression. Quite apart from that, he gives as an example the taboo in *talking* about sexual matters in our society—just *talking* about it—and that it is probably causing enormous damage because the child is unable to think or talk about those matters freely. I happen to believe that is true. It is better to talk about them.

We would protect the child from hearing about rape, about violent sexual crimes. We have a lot of special ways of hiding matters sexual from children. He is arguing that therein lies the seed of danger. You simply indicate to the child by not talking about sexual things that they are so dangerous or so bad that they should not enter their mind. Society, I think, is being like that in a wider sense about many matters.

I notice that Dr. McKnight, who is a very traditional psychiatrist, in his letter to Senator McGrand, which is part of your minutes, talks about having some five or ten years left in this area. I phoned him and asked him, "What sort of apocalyptic talk is this? Why are you thinking in such a short time span?" He talked to me for about five or ten minutes on it.

I am inclined to agree. I think we cannot afford to idly talk about better treatment programs and prison reform for very much longer. That may be a personal and very wrong opinion, but I believe our society has to begin asking very basic questions which have to do with the early formation of children. I have said it about ten times, and I am sure you are tired of hearing me say it.

Senator Croll: I am very interested in the questions asked by the doctor. However, I must remind you, doctor, that you were not there and once upon a time that institution was under my care. You have no idea how glad I was to be rid of it. I heard the same argument at that particular time, the very same one you present right now quite convincingly.

Nothing has changed very much. It has become one of the best institutions in the country, as expected, and why not, but nothing has changed. The public have never warmed up to the problems that you get in that institution. Why not?

Dr. Barker: I have a brief statement which I think answers directly that question, if I may be permitted to find it and read it.

Senator Croll: Yes, go ahead.

Dr. Barker: I am quoting from a book review by a sociologist whose name is Seeley. He was reviewing in the publication "Canada's Mental Health" a volume entitled "Action for Mental Health" which was an assessment of where we were in mental health programming.

What he says is:

What is disappointing, what creates the total effect of a "dull thud" in the final report—even though brightly written—is the fact that it says very largely what everyone (e.g. the reports of the Council of State Governments) was saying fifteen or twenty years ago or more. There is, for me and others, the strongest impression of déjà vu, the most vivid feeling of "This is where I came in." Why?

When a persistent pattern of behaviour yields no results—or results quite different from those intended—psychiatrists direct the patient's attention to something persistently wrong—inept or maladaptive—in the behaviour. And yet, when for thirty years we have attacked without appreciable alteration the public's apathy about or rejection of the mentally ill patient, all we can do is deplore public behaviour instead of examining our own ineptitude. And it is ours that is inept. It is inept because its principal proposition—that mental illness is just like other illness—is simply not true. It is inept because of the way we have of talking about it—as though the speaker were outside and above the thing spoken about. This makes impossible the participation which is itself the medicine against alienation. Furthermore, it is inept because the capacity to deal with mental ill health is a function primarily of mental health, not of knowledge about mental health: so that the way to help people deal better with those even sicker is to heal the former, not tell them—a very different operation!

What is entailed then, for a meaningful attack on mental health is the creation of a healing and helpful society; not a tinkering one with special corrective institutions, inside an essentially competitive and self and other-destructive one. But this is supposed to be political and sociological territory. And those who are bold with the patient, who see daily how the sickness of the society finds its inevitable counterpart in the sickness of the person, cannot be brought to deal with society boldly—or even to indict it clearly. It is as though they opposed breakdown products, but favoured catabolism. Whether history will label their patients as crazier than they, must remain an interesting open question.

They are talking about mental health there. We are talking about crime. I notice from some of the earlier proceedings, some of you would make a sharp distinction between the two. I do not, personally.

Senator Norrie: You do not make a distinction?

Dr. Barker: Not a sharp distinction, not as sharp as before. *Mens rea* is a very important thing to the legal profession. It dissolves under psychiatric assessment. If the mind does not seem to be behaving logically, if a person does not choose to do right and you cannot understand why, you define it then as an illness, but the same factors are at work, it seems to me, in the mind whether a person chooses to do right or wrong. I would enjoy a discussion of that. It does come up in section 16. Clearly, whether a person is found insane under the Criminal Code for the commission of an offence has far more to do with

the politics of the trial—not in any unfair sense, but with the nature of the charge. What lawyer would put forward the defence of insanity on behalf of a person if he is just charged with B and E? It has less to do with the state of the mind of the person than other factors. It is a very fuzzy distinction between mental health problems and criminal behaviour. It seems to me that we are far better off to deal with the more basic notion of disturbed behaviour, some of which is criminal.

I suppose it is possible to find—I have not met one but I would not necessarily at Penetanguishene—a well-adjusted criminal, a person who simply feels that the odds favour it, perhaps that he likes night work or working in that kind of exciting job and he is not likely to get caught and he weighs those chances. He is an informed and sensible criminal. I think there are some. I would not call them sick.

Senator Norrie: Would you think that a criminal who had created a crime at some time could be more insane at one minute than at another? Do they have spotty insanity which clears up and the person is quite normal, but then might create another crime later on and nobody could detect that trait of insanity in him?

Dr. Barker: Well, the situations I am most familiar with, in that context, are murder situations, and the cases I am familiar with are ones in which the murder occurs at a particular time, with a number of factors developing into the situation, which produce the murder at that instant. Most often, where insanity is available as a defence, the person has been psychotic for a period of time and therefore he is unable to appreciate the nature and quality of the act; but there are cases where a person was psychotic at one time, and later on was not, perhaps while being questioned by the police. It is a shifting thing.

Senator Croll: I have two questions, and I will ask the second one first. Are you an abolitionist?

Dr. Barker: No. I am in favour of capital punishment. Dr. Boyd, the director of the mental hospital, and I, spoke in favour of capital punishment in the media some month and a half ago, not because we feel it is right morally, or right in any other sense, to kill people but that it is a much greater evil for the government to pass legislation which requires, without provision for parole, mandatory 20 or 25 year sentences for murder. That is an incredibly backward move, because very many people who commit murder are clearly not a danger to society, and are capable of being rehabilitated. The management of prisons will be hopelessly complicated by the provision of such mandatory sentences, the opportunity for rehabilitation programs anywhere in the prison system for capital cases without the provision for parole will be eliminated, and in my opinion it makes more sense to sacrifice a few dangerous and unrehabilitated felons in order for the public to regain some sense—perhaps through a motivation of revenge—that justice is being done, and we argued for that so that we will be able to continue to try to rehabilitate. I think, if we do not that at this time, that in 10 years from now, because the crime rate is going to rise—it is going to rise whether we have capital punishment or not, of course—we are going to be having the argument in favour of capital punishment 10 years from now on economic grounds which is the more sinister, as I see it, that it is simply too expensive to keep all these people locked up for 20 or 25 years. The options are bad on both sides, but in our opinion it is far worse to do a trade-off of mandatory prison terms without the option for parole, of 20, 25, 30 years.

Senator Croll: When you say that these sentences will be without the option of parole, that is not correct, doctor.

Dr. Barker: I understood that the provision that is contemplated allows for a mandatory 20-year sentence.

Senator Croll: No. I think parole is available after 10 or 15 years.

Dr. Barker: It is available after 10 years at the present time, for non-capital murder. What is contemplated is that there be mandatory sentences of 20, 25 or 30 years. I have heard those figures bandied about, and that is an exceedingly retrogressive step.

Senator McElman: There is a provision that after 15 years there can be a special consideration.

Senator Smith (Queens-Shelburne): Before a judge.

Dr. Barker: I think it is insane.

Senator Croll: Doctor, in tracing back from what we are trying to do now, I suppose it was about 15 years ago that we started pulling these people out of the closet and admitting that they existed. Up to that time we were hiding the fact that we had somebody in the family who wasn't well. That was 15 years ago, not too far away from the time when we started to take on that new attitude.

Dr. Barker: Are you referring to the back wards of mental hospitals, or the acceptability of mental illness by the general public?

Senator Croll: Yes, and acceptability.

Dr. Barker: It is not my feeling that mental illness is as yet acceptable to the general public.

Senator Croll: Well, the recognition that it is there—and here I am getting to the acceptability of it—the doctor you spoke to said it is still some years away, ten years or 15 years away before it is accepted?

Dr. Barker: No, he was not referring to acceptance. He was saying that we have five to 10 years to get at solutions to the problems of violence and crime in our society.

Senator Croll: But if we have not accepted it, and you say that the acceptance is not there yet with respect to mental illness, how can they talk about doing something about it if we have not yet accepted it fully?

Dr. Barker: Well, I think we still want to think of the mentally-ill person as being different from ourselves—that he is suffering from some kind of medical disease. The analogy, I think, can be drawn between the person in the family who becomes mentally ill and who is hospitalized and the person in society who becomes a criminal. We have to define *our* role in the process. It is often said that the person in the family who becomes hospitalized in a mental hospital is not necessarily the sickest, but the most vulnerable and the others may be sicker but they extrude him into the hospital. We must look at society to see what the rest of us are doing to extrude a certain number of breakdown products into our penitentiary system or our hospital system. Who is going to accept that? The family is not accepting that model. At the present time there is still a clinging to the notion that the disease rests in the individual. We lock that individual up and that has solved it for society. But it hasn't. That person is a symptom and has grown out of a social system or a society which has had

a lot to do with the creation of the problem, and we blind ourselves to all those factors by saying that we have to put him away, preferably a hundred miles from a major centre. That has changed somewhat, perhaps due to your policies. We have brought in family therapy and some progress has been made in this field. But the basic notion that I may be the cause of my wife's psychotic depression is not widely accepted or that the parents may be more culpable in his offence involving the child out West has not been accepted. Perhaps the child was brain-damaged. We do not know. When I am testifying in court and I see the mother weeping and the boy is on trial for having shot his father and they ask me, "What do you think caused this?" I waffle on about biochemical causes of schizophrenia because the mother will feel better if she feels that it was something beyond her. It is very hard at that moment to say that perhaps the way the mother handled that child in the first three years was a factor. I do not want to scare all the mothers and fathers who are trying hard against a lot of odds to raise their children. That is the danger in talking prematurely or even beginning to talk about this area. But perhaps parents do not have enough supports in our culture; perhaps there are not enough rewards for being a good mother. Those might be the type of factor that the committee would uncover—that mothering is a very difficult job to do well in contemporary society.

Senator Croll: Does mothers' allowances help?

Dr. Barker: I am sure it would help.

Senator Croll: We understand what you are saying, doctor, but the thing is that it is hard for us to realize you are throwing so many truths at us and we don't have the answers.

Senator Bonnell: In Prince Edward Island, where I come from, we have a lot of peace and tranquility, and about 90 per cent of our crime is connected with alcohol. I am one of those who believe that alcoholism is a major problem, and I find that all the alcoholics in my part of the country now tell me that it is a disease. It seems to do something good for their ego to be able to say that it is a disease. As a psychiatrist, and one who is related with crime, do you think alcoholism is a disease and that that is partly a reason for crime? Personally I believe that these are people who have never grown up and become mature.

Dr. Barker: My opinion is that the excessive use of alcohol is a symptom and it is very attractive for a person to believe that it is a disease just as it is attractive to the mother of the boy who shot his father to believe that something is wrong genetically or biochemically to cause the tragedy rather than that somehow she is implicated. However, we are all implicated in some manner. That is hard; that is why I come back to saying that the Senate, perhaps, can be an arena in which to implicate ourselves. Who is going to throw you out for saying it? The Senate is secure. I think that if some questions were even raised by a candidate, he might be re-elected. With respect to alcoholism, we are talking about an enormous situation, widespread and international. Why do people want to drug themselves out of their minds and sometimes out of existence? Alcohol is a wonderful tranquillizer, but why is half of North America on Valium? There is a real urgency to begin to look at those factors. It is beyond the point of worrying about treatment programs, in my opinion.

Senator Bonnell: What percentage of the crimes, be they sex crimes or murder, with which you are presently deal-

ing at Oak Ridge, would be due to alcohol or drug abuse at the time of commission of the actual offences?

Dr. Barker: Over half of them would have been under some influence of alcohol.

Senator Bonnell: Or some other drug?

Dr. Barker: Yes; over half of the population is under the influence of alcohol or some other tranquillizer half the time.

Senator Croll: It is not the influence; when you use the word "influence" of alcohol, you do not suggest that half the people in the country are under the influence of alcohol.

Senator Bonnell: When they commit a crime.

Dr. Barker: In my opinion, a great many people use alcohol as a tranquillizer. Do we need to be half drugged to face life? There is something basically wrong, and I argue that crime and violence in our society at this time is endemic and it has to do with those factors.

Senator Smith (Queens-Shelburne): How many witnesses would you estimate we would have to call before this committee to arrive at a deeper understanding of this problem in order to submit a report which would come to the attention of the public and make them realize how strongly we feel with respect to this problem? How strong would the reaction be in response to this? And do you believe it would be a big task you contemplate?

Dr. Barker: No, in my opinion, you could call half a dozen witnesses, if you were to get the right ones. Also, because of the prestige of the Senate, the committee could evoke from distant experts written statements from the best minds in the areas to which I refer. I do not believe it is a matter of a great deal of money or time on your part to go ahead with such an investigation. I repeat, I think that as the Senate of Canada you are in a unique position to endeavour to direct a spotlight on an area which, admittedly, is under-researched, under-investigated and, in my argument, frightening for Canadians to consider.

The Chairman: Senator Smith, for clarification, did you question as to how many witnesses it would be necessary to call refer to this committee before we report, or a committee that we might recommend to follow up this investigation?

Senator Smith (Queens-Shelburne): A committee which might be formed upon presentation of our report.

The Chairman: The committee that would follow our report.

Senator Smith (Queens-Shelburne): To give us an idea of the dimension of our task. I think we should do something along this line.

The Chairman: You were addressing your remarks, Dr. Barker, to the committee that would follow our report. Our terms of reference are only to report upon the feasibility of a further investigation, and you were addressing your remarks to the further investigation after we had reported, as I understood it.

Dr. Barker: I would think so— whoever has the job to do it—a group of senators. It seems to me that it is not an onerous task.

Senator McElman: Could we ask the witness to provide the committee, through you, Mr. Chairman, with a list of names and addresses of the most competent people in these respective fields about which he has spoken, so that we could consider the possibility of calling such people before the committee either at this or a later stage?

Dr. Barker: I would be pleased to do that. It is not easy, in the sense that we are talking about a variety of disciplines, and within each discipline there are high-profile people, and people who for other reasons within the discipline are thought of as experts. It will take some ferreting out to find those who enjoy going to conferences and making press-catching statements, from people who have done solid work, who can back up what they are saying, who know the field and who, in my judgment, will give competent opinions to a group such as yours. I do not know that now, but I will be pleased to try to submit those names and leave the selection to the committee.

Senator McElman: I should point out to Dr. Barker that the committee has the capability of sitting *in camera*. As he prepares his list, he may come across people whom he feels would not appear if they had to make a public statement. I would like him to know that we can handle that situation very nicely. It might have a bearing on his list of possible witnesses.

I would say also that we have been seeking, without too much advice, the proper people to appear before us. It is very obvious that Dr. Barker can give us good advice, and we must not miss the opportunity.

Dr. Barker: Thank you. I can try.

Senator Neiman: Before the meeting started, we were speaking of the series of articles that appeared in the *Globe and Mail* last week. I recall the comments of one of the inmates to the effect that he wished he had been sent to a place such as Oak Ridge many years earlier instead of being sent to a training school. Eventually he went on to Kingston and to some other penitentiary.

I am concerned, as is Dr. Barker, about what is happening in connection with Bill C-84, which deals with the abolition of the death penalty, because I am a strong believer in abolition. I am also concerned about the other provisions which almost inevitably involve longer prison terms for murderers.

I am extremely concerned about the way our prisons are set up today. We have an example in the Toronto area, where a man has just been declared a dangerous sexual offender under the existing legislation, and he will be sent to Kingston presumably because they have the proper psychiatric facilities.

This is a lengthy way of asking you the question, but I am wondering whether in our whole penal system we cannot in some way identify, even at the training school age, at the age when these people are sent to Kingston perhaps for the first time, the people who are potentially dangerous, and segregate them at that point—why we cannot have more facilities like Oak Ridge. Perhaps it should not be to the same intensity of care, of treatment, but should we not have far more facilities for people who have first come into contact with the law?

Dr. Barker: Yes. Generally, facilities that have a treatment orientation are clearly better than patients being subjected to an inmate subculture. Again, if we are talking about the use of scarce resources and there is money to go

into treatment programs, compared to at least some money going into exploring basic causative factors, I am arguing for more dollars for the basic causative factors.

Additionally, there is a problem that one is not always able to identify at an early age, which individuals require more intensive treatment, and to predict who is going to go on to kill.

Further, and finally, there is the problem that if you can identify the person as being potentially a recidivist, with the civil rights pendulum being where it is, you are very much restricted in the kinds of treatment programs that you cannot just offer but make available to such a person, because usually they are not people who are looking for treatment in the first place.

I recall, in particular, a patient whose treatment I was responsible for for some two years, who had been charged with break, enter and theft. No review board would keep him in hospital for the length of time it might take to successfully treat him. He was released and subsequently killed two people. It reflects both our lack of knowledge in being able to predict the person, and the climate to force treatment on people before they do something horrendous enough to warrant their incarceration for a long period of treatment. All those factors complicate the problem.

Senator Neiman: This is what is perhaps bothering me about this projected research. In a sense, I agree with you. If we can get to the preventive stage, of course that is the ideal. However, society seems to be constituted in such a way that we wait for something to happen and then try and do something about it. We are having difficulty today dealing with the hardened criminal. Our only cure seems to be to add on a few more years and put him away for a bit longer. We are obviously going the wrong way. You are saying we have about five or ten years to smarten up in our attitudes and the way we are going. We are starting at this point with a hardened criminal, and if we cannot move back and say, "All right, let's look at this boy when he was 16. Let's look at him when somebody put him away in a training school. What was wrong with him?", what are we doing with him then?

If we cannot start then, if we cannot cope with the civil libertarians and say, "What we have got to do is change our attitudes," if we do not, how in the name of heaven are we going to go back to the new mother and start investigating and say, "Look, we are not sure what we are doing; we cannot really tell you if this baby is going to be good or if this baby is going to be bad, but we want you to do this"? I believe we are getting into such a field that...

Dr. Barker: I do not think we are into such an horrendous field. When I attended the Ontario Psychiatric Convention a few years ago, at the child psychiatry section, one of the child psychiatrists there said that there are thousands of ways of raising children. We cannot dictate to parents how they are to raise their children—being permissive or with a lot of discipline, or this or that. The analogy he used there, which I think was a good one, was that there are a thousand ways of baking a good cake. I cannot tell you or anyone else how to bake a good cake. However, there are probably a half dozen things I or anyone else could tell you, that if you do any one of those things to your cake, you will not get a good cake. Perhaps we should have an intensive look at the things which are already known and agreed upon by specialists that will ruin a "cake". A media campaign such as for seat belts, that zeros in on such things and says, "If you do these things to your

kid the odds are that he is going to be in a mental hospital or a training school down the line."

Are we aware? I do not know that it is established by the experts that if the mother is out of the home in the first three years it is going to be detrimental to the mental health of the child. I am not saying that that has been established. It may not be true. If it were true, and if it were clear that a public media campaign, and that alterations in institutions and political funding, or whatever it may be, could ensure that the mother is with the child for the first three years, that would do more for the kids who are going to end up in training schools and mental hospitals than building better hospitals and training more psychiatrists. That is the kind of thing I am looking for. I do not think we are miles away from those kinds of things. I do not have that kind of information, however.

I have given up enthusiasm for trying to get the seriously damaged offender back into society. I just think it is like catching water that has dripped through a leaky roof. If we are going to make this work, and if we are going to be trying, and if there is ever going to be a pay-off, it is going to be back there that we must act, and in making changes of a more sweeping nature, and in pointing out the consequences, potentially, to people.

Senator McElman: And it is a long road, indeed, Dr. Barker. For example, there are some who believe, including myself, that a large part of the illness in our society—and I speak not of individuals, but the whole of society—could be corrected by improved educational standards. One very quickly says, "Well, if the curriculum specified that we should be teaching love of our fellow man, and that instead of bashing up the kids in the neighbourhood we should talk with them," and so on, things would be a great deal better; but then one realizes that one has to have teachers who are capable of doing this; one has to realize that there are 600,000 teachers now who are already through their training, and in the mill. How would we get rid of them and replace them? You then come back to the question of the curriculum for teachers' colleges.

These are the reasons why I say it is a long road that we are talking about, but we should not be disturbed or discouraged by the fact that the road is indeed long.

Senator McGrand: And some of the teachers do not hesitate to go on strike, which is a bad example for the children.

Senator McElman: Well, that is another situation.

I was impressed with what you said earlier on, Dr. Barker, when you said that people look at the person who has been convicted of a violent crime, be it rape or murder or whatever it may be, and say, "He is different." You say he is not all that different. On that score I have two questions I would like to put to you.

Are you saying to us that instead of looking at the individual and saying that a particular man is mentally disturbed, we should be looking at society as a whole and saying, as it has developed up to this point, that society is mentally disturbed?

Dr. Barker: Clearly that is one part, and the most contentious part, of what the Senate committee should look at, and ask experts to comment on. It is not the whole part of it, of course. There should be pediatricians and obstetricians and others looking at potential organic factors early in life. But one group which has not received adequate

public hearing, I think, is the sociologists, who will balance off what the rest have to say. If you have a communist system you have certain breakdown products as a result of that system. The perfect system, of course, has not been devised, and you have certain costs as a result of our way of doing things, also. I do not think people equate the breakdown costs with the system, let alone getting to the point of having a debate in Parliament influenced by that. If we make policy moves of this nature, what is the human cost going to be at the other end? I am arguing that we should get into that kind of debate.

The answer, therefore, is yes, that that is clearly part of it, and the most contentious part of it.

Senator McElman: And that is why it is so difficult to obtain, through the political system, or otherwise, truly preventive measures, rather than all of the reactive and remedial measures that we see being adopted.

Dr. Barker: Exactly.

Senator McElman: The other question I would like to put to you is this. You have dealt over many years now, intimately, with the perpetrators of violent crime. On how many occasions, as you talked with such people, have you said to yourself, "In a similar circumstance, what would I have done?"

Dr. Barker: Well, that is always in the background, perhaps most clearly at our conferencing procedures, where we are assessing an individual. That comes up quite often. For example, a patient is admitted to Oak Ridge, the maximum security hospital, and as you are admitting him he may be angry, and yelling at you, and saying, "I've been framed, and sent here, and there's no point to it," and you mark that down as symptoms, and so on. Very frequently we will say, "Well, if I had been picked up and brought to this maximum security hospital, I would object, and if I am normal, how does a normal man act when he gets admitted?" Because if such a man were to sit back quietly, the psychiatrist may note him as being indifferent to being admitted to a maximum security mental hospital. We are asking ourselves, in that sense, "How would we react in a similar situation?"

Senator McElman: But the crime itself is what I am talking about.

Dr. Barker: Well, there are crimes which are clearly sick, but they are extensions of our own illness, not matters that are different in quality. We have all been jealous, for example. We do not get a gun and go out and kill the person in question, perhaps, but we know what the feeling of jealousy is, or the feeling of rage or anger. I am saying that in that sense we are similar to the people we are dealing with, with the exception that in the case of the person who is organically brain damaged it is hard to have any empathy with him or to sense what is going on in his mind. That has been noted for a long period of time. When a person starts talking about something that you cannot personally relate to, you begin to wonder about organic brain damage.

Senator McElman: Perhaps I am being unfair, but I am going to press you as far as I can.

Dr. Barker: I wish you would.

Senator McElman: Have you ever said to yourself, "At the age of 17, as this boy is, I might have done the same thing, in similar circumstances?"

Dr. Barker: Yes. Yes. Perhaps not—yes, I have, but more so our attendant staff, who have, generally, the same socioeconomic background as our patients, and who approach life's problems in a similar way. My middle-class upbringing makes me less prone to overt physical violence, but others, who are used to that as a daily way of life, are generally closer to the kinds of offences we are discussing. Often our attendants say, "I'd do the same thing if somebody attacked my daughter," for example; so in that sense, yes. With that exception, yes.

Senator McElman: So I bring you back to my question: you are a product of the same kind of society as we are, and there could be circumstances in which you could have committed a violent crime.

Dr. Barker: Exactly. Senator McGrand quoted from Arthur Maloney, I believe, and asked the question himself about what puts the judge up there and the prisoner in the dock. It comes back again to this question of a group at risk.

The Chairman: It boils down to what John Bunyon said. "There, but for the grace of God, go I."

Senator McElman: It may not be too relevant, but I would like to say that in New Brunswick, at this point in time, we have two convicted murderers of police officers who, under the existing law, are liable to be hanged. The case has now gone to final appeal, and I believe there is a stay in operation, until it is decided what Parliament is going to do on the subject currently before us. I will not go into the full details of this case except to say to you that of the two people involved, one, the older of the two, is a most violent person. The younger of the two is a person who was brought up in a rather dreadful home environment, and as part of his upbringing his father, who was a pretty awful creature, would send the children out at dark, in the evening, to steal whatever they could in the community. If they came home without stealing, he kicked the hell out of them, and I mean literally, physically kicked the hell out of them. This boy got into the hands of the older person, and one can appreciate that if he was told, "You shoot your police officer and I'll shoot mine. If you don't, I'll kick the hell out of you", he would do it. So here we have a situation in which they are both liable to be hanged, both products of the society in which we live, but the element of guilt is far greater in the one instance than in the other. Yet our society will deal with the two cases in exactly the same fashion—either hang them or put them away for 25 years. For the one who goes in there is no hope of rehabilitation. Within 25 years there is no damn hope that we would ever have a human being left.

I wanted to make that comment as a follow-up to Dr. Barker's earlier statement.

Senator Burchill: I would like the doctor to say something with respect to rehabilitation. What percentage, in your experience, of those with whom you deal have been rehabilitated, and what are your views with respect to rehabilitation?

Dr. Barker: There have been several studies at Penetanguishene in connection with that factor. The failure rate in relation to patients who have been found not guilty by reason of insanity is something in the order of nine per cent. Only one such person has subsequently killed again. The rest of the failures have been for offences against property. The failure rate for patients who are detained in the hospital after being certified as mentally ill is approxi-

mately one third. I believe that is a sufficient answer. I had intended to comment in relation to the bill before the House of Commons that, because the public is so alarmed in connection with criminals not getting desserts, their just desserts, the rehabilitation of the very good risks, or those patients who would very likely to do well, will suffer, in my opinion, which seems to be a tragic saw-off.

Senator Bonnell: Of those who are hardened criminals, what percentage are in the institution because they have committed a crime against their immediate contacts—in other words, father, mother, daughter, brother, child or friend—as compared with those who are hardened criminals because they were disturbed by the police and shot in order to get away or something of that nature? It seems to me that many are in the institutions, not because they are hardened criminals out to do harm to society but because they are criminals who rebel against their own immediate friends. Most murders are connected with close acquaintances. What percentage are there because of a criminal act toward an immediate relative or close friend?

Dr. Barker: Most of the murderers who have been found not guilty by reason of insanity have been involved more or less in family crimes. The term "hardened criminal" gives some difficulty. In my opinion, a criminal is hardened by society's warehousing of him in a prison. There are people who from a very young age are dangerous and repeatedly so, and who do need to be incarcerated, in my opinion. However, most of the strategies for incarceration in the prison system tend to make the problem worse.

In response to a comment made by one of the senators at an earlier meeting, that the function of these committees is to recommend changes in the law, because the possibility of penal reform seems so remote and hopeless, I simply propose that the Criminal Code be amended to say that anyone sentenced to prison must serve his time at the mercy of the most powerful thug in the institution. We should amend the Criminal Code to bring it into line with current practice!

Senator Norrie: To come to the point as to whether this is a feasible undertaking for the Senate, if the Senate should turn this down, in view of our crime rate as it is and the advancement predicted, it would be a real black mark on our reputation. In addition to that, I do not see how we could tackle any other age group than that which Senator McGrand advocates, after listening to you and Senator McGrand's presentation to us. I am quite sure, from the remarks you have made this morning, that you also feel that way, that this is the logical place for this committee to start.

Dr. Barker: I very definitely do.

Senator Norrie: This is a point which I feel we must make very clear, because this is where the opposition to this committee lies.

Dr. Barker: The opposition is to it focusing on the young age group?

Senator Norrie: Yes, I think so.

Dr. Barker: Well, that is sad, for all the reasons I have mentioned. It seems to me that that is the age group which must have attention focused more on it.

Senator Norrie: The mere fact that we do not have much literature, or because it is a new field really, not to you, but to the public, also influences the thinking.

Dr. Barker: It is new and it has this dangerous aspect to it in the sense of being unpopular to the public at large. That is the factor which it seems to me makes it particularly important ground for the Senate to cover.

Senator Norrie: Those are the points I wished to make definitely clear, because that is what we have been supporting all along on the other side of the fence, that we cannot go on to another age group until this is clarified.

Senator McGrand: I believe that the contention that we have five or perhaps 10 years to consider this situation carefully before it becomes worse is probably correct. However, what would we do if we attempted to reform society? That is what it means; we must have a better understanding of life and our relationships with other people. A number of people are working on a program of human education in which children are taught to live with their environment. People refer to earth as dirt. A handful of soil is not a handful of dirt, but a handful of living organisms without which we cannot live on earth, so it is not dirt. These people advocate that our schools should bring all these aspects together to create a better society in which to live. I read their magazine.

Senator McElman: He said this would bring the beasts out as gentle lambs. Do you know that in New Brunswick we have a judge who a week or two ago wrote a letter to the editor and advocated the return of the lash? He said, "That is the way to rehabilitate these beasts."

Senator McElman: He said this would bring the beasts out as gentle lambs.

Senator McGrand: There is no doubt that we have a long way to go.

Dr. Barker: In that connection, though, I think there are two encouraging things: one is that when I was a teenager, or a little before, growing up in the west end of Toronto, the Humber River became so polluted that we could not swim in it. It started to smell, and so on. I never heard any discussion in our family, or in others, that it was a state of affairs other than inevitable. It was just that way: the rivers were getting more and more polluted. In my adult lifetime there has been an enormous public revolution, if you like, in public opinion about the pollution of the environment.

The amazing thing is that I accepted it at that time with such equanimity, and perhaps most of us did, that it was a just fact of our way of life. It heartens me that it is possible that there could be a similar revolution—that is perhaps too strong a word—in public feeling about the pollution of children's minds. It is not entirely out of the question that public opinion could be shifted in your lifetime and mine.

The other factor, perhaps in a more pessimistic way, is that if by five or 10 years Dr. McKnight means that society will evolve in a very much more rapid manner, perhaps uncontrolled manner, it still is true, I believe, that at some point societies will be faced with the same problem of raising children who as adults can live with each other in a more sensible way than we seem to have evolved at the present time. I would like to see that work carried on, if not for our civilization or our society as we presently know it, then for some future one—this correlation of what we do to children and what we get out at the other end.

Senator McGrand: You cannot teach a child to grow up and live with other children, and respect the dignity of

other children, unless he is taught to respect the dignity of life. I might mention soil, trees, animals—everything. It has to be a question of a reverence for life, does it not?

Dr. Barker: That kind of talk in this day and age sounds a bit far out. I suspect that if you talked about pollution 15 years ago you would have been thought far out.

The Chairman: As a supplementary to Senator McGrand's question, do you know of any studies which have been made on children who have had pets to care and be responsible for; whether such children have more regard and sensitivity for life than those who do not have that opportunity? Is that a fact in the life of a child which could have a beneficial effect on them? Are there any statistics to show that children who have had that advantage are less prone to crime and violence?

Dr. Barker: I do not know the answer to that question. I do not know of any existing research. It is a subject that is of personal interest to me. I suspect that pets are an ameliorating factor. It is clear that pets can adopt new roles, or can be made violent, by the way they are handled when they are young. I suspect there are people who have looked into that. I do not know of the research, but I think it is relevant to what we are talking about.

Senator McGrand: Mr. Chairman, I listened to Professor James Mehrtorf, of New York, speak on this thing. He was a professor of psychology at the University of Vermont medical school. He said that when he was talking to students on violence, and that sort of thing, he would tell them to tune into a boxing match, but not to watch the boxers but the audience, because that is where they would see the psychopaths, the evidence of the psychopathic mind.

Dr. Barker: That is a frightening thing, that the film industry and TV media can market 50 murders a night on television and have a ready and willing audience for it. It is a scary thing.

Senator Norrie: Do you think that films on television have a bearing on children's lives?

Dr. Barker: I think it must. I am reluctant to give a definitive opinion on something I have not looked at—the current arguments pro and con and the current research which has been done on it. My own feeling is that it is very hard to nurture a child on killings. The average child watches something like 10,000 murders by the age of 15. The statistics are incredible.

Senator Bonnell: There is one good thing about it: the good fellow gets away and the bad fellow gets caught.

Dr. Barker: That is a problem which came up with my own six-year old daughter. She has got to know quite well some of the patients who had previously been in the hospital. From the television she gets a clear notion of who is the good guy and who is the bad guy. I am forced to tell her, when she asks, that I do not really see that there are good people and bad people. I am capable of doing things which in retrospect, I think are bad, wrong, things, and I am capable of doing some good things; and I see that in other people. It is just not a black-and-white issue, and painting it that way is a distortion of life.

Senator Norrie: There was recently a film on Stephen Truscott and I realized it was being shown on my TV. I found five or six boys around the TV, and I said "That's it."

That is the only time I have turned off the TV. They really could not understand it. They were quite crushed that I would not let them look at it.

Senator McElman: Producers of films and television programs are not stupid people. They are out to make money from the society in which they live. They are pandering to the will and wish of that society, and we call it entertainment. We always come back to where we started, that it is society we have to work on, and where do we start? What Senator McGrand is proposing would appear ridiculous to some, but it is a start.

Dr. Barker: To ask the questions is the start. All I ask is for a Senate inquiry just to ask the questions.

The Chairman: While we are on the subject, Dr. Barker, you have shown us a pretty clear idea, of what a Senate committee would do. You have mentioned that possibly six or eight witnesses should be called. Can you go a little further and say, if the Senate undertook to set up a special committee to investigate this narrow field proposed by Senator McGrand, what topics or avenues the committee might explore? We would have to call different types of witnesses to give evidence on different aspects of the problem. Can you outline some aspects of the problem that would have to be explored?

Dr. Barker: My feeling has been that in focusing on factors in pregnancy, birth and the first three years, one covers the formative years. As I have thought about it, perhaps not definitively, the way I would approach it would be to inquire of specialists in the wide range of known disciplines who might have information bearing on the issues, and what, if anything, has been written by anthropologists, which correlates factors in those early years with disturbances in personality, crime, or violent behaviour in latter life? What have sociologists to say about that? What have social psychologists to say about that? What do child psychologists have to say about that—and child psychiatrists, pediatricians, pharmacologists, obstetricians? Try to cover that range.

It is a range of material with which I hope to become familiar, in connection with the Canadian Society for the Prevention of Cruelty to Children. My own feeling would be that, after a review of the information from specialists in that range of disciplines, you would be able to pull out a half dozen key people who could cover that ground. There may be other ways of approaching this which would be more fruitful.

The Chairman: Would you suggest a number of people be written to, specialists in their particular field, and getting their opinions on certain specific questions? You could write to, say, 50 or 100 people, who are specialists anywhere in the world and solicit their opinion; and, after having received their opinion, assess what you have on paper and then select maybe six or eight or a maximum of ten out of this group who might appear before the committee for further questioning?

Dr. Barker: I do not think it would be difficult for the Canadian Society for the Prevention of Cruelty to Children to obtain funds to do that work, to scan the related disciplines, and have a person in each of those disciplines scan the literature with which they are familiar, and pull that material together. I believe that should be done in preparation for that committee meeting, as groundwork for them to see the kinds of material that might fall out of that. I see that as an important thing to do, and if such a

committee was going to be set up, and that was going to be useful material for such a committee, I am certainly involved and concerned enough to be interested in trying, to prepare a working paper, if you like, that the committee might make its selection of witnesses from.

The Chairman: Our terms of reference are limited to making a report as to whether the whole matter is feasible or not. If we say it is feasible, then we have got to go a step further and say how the committee should proceed. It would be useful to have your opinions on that.

Senator McElman: It is a marvellous offer the doctor has made to us and perhaps the organization he speaks of could correlate this material for us. If that could be done, it would be of tremendous assistance to the committee.

Dr. Barker: That is a large task, but a task I see as important and not requiring any Senate funds to do, and facilitated on my part and the organization's part by having the Senate expressing an interest in the gathering of this information, to the end of allowing a Senate committee to carefully select the witnesses it would like to have testify on the matter.

The Chairman: Let us assume that the committee reports that it is feasible, in the circumstances, and we recommend a special Senate committee, and the Senate accepts our report and the committee is set up in due time and selects its witnesses, what do you see as the overall result of this committee? Do you see an impact on public opinion? Do you see a framework in which we would give impetus for various types of research in various fields, or a stimulus for that research and probably a stimulus for new research in fields which have not yet been touched upon?

Dr. Barker: All of those things. And I see you as focussing on something such as Finsten and Tait said in their early paper, that is a relatively unresearched area. Most people would say other areas related to crime and violence have been researched to death. There has been relatively less attention focussed on this, and I believe a Senate committee would bring attention to it and have greater significance. Following on from that, it would be a stimulus for further interest, and that in itself is adequate.

The Chairman: Perhaps I should go a little further and speak of what our aims should be. Perhaps we should not just leave it to chance and say what might happen or what might not happen. Should the committee say this should be done and actively stimulate the research in different areas?

Dr. Barker: I do not know what means there are at the disposal of the Senate in this regard. As I have said repeatedly, I believe it is an area which has been neglected for too long, and it is an area which has inherent unpopularity, and for that reason requires a socially secure institution to speak out publicly about it. You do not have to take a stand on it, but there will be an arena in which that debate may take place, an arena of high status.

The Chairman: Such a committee, of course, has no funds of its own and would have no power of its own to direct any particular type of research in any particular direction. However, it could make recommendations to the government and it could make recommendations to various departments as to what needs to be done and how they might do it and possibly encourage private interests or organizations to explore certain avenues, such as your own organization with relation to cruelty to children.

Dr. Barker: I do not think that should be underestimated. Perhaps you do not get feedback about the kind of fallout there is from your proceedings, but that is what I would count on happening.

The Chairman: I would now come back to this unfortunate case of the little seven-year-old child who was recently alleged to have murdered another child. This would seem to be a case where records would be available of the circumstances under which he was born, prenatal circumstances, and possibly the kind of family life he was exposed to. Do you think that information could be secured in that particular case?

Dr. Barker: I think the boy is remanded now for psychiatric examination. Because it is closer in time to the event, they would be able to obtain records more easily.

The Chairman: What I am asking is: Will the psychiatric examination which he will undergo include all of these things? How far back would they go? Would they go back to his pre-birth records and the family life?

Dr. Barker: No, the standard psychiatric examination would consist of writing to the hospital for details of the birth. If there was something especially unusual about it, they would seek further information. I would predict that what they will do is interview the parents. The mother may describe that the birth was difficult, or the baby was jaundiced for the first week or whatever the circumstances were. They may find that the child was hospitalized for the first six months of its life due to some problem. Depending upon the information they receive, they may go back further.

Some questions have not been asked. No one is asking what the lighting conditions were in the delivery room or how much noise there was, and people are beginning to ask questions about the shift from the womb to our atmosphere. Those questions were never asked, because no one ever thought to ask them.

Senator McGrand: They have only begun to ask those in the last five or ten years.

Dr. Barker: It may be a red herring; we do not know. However, it does not hurt to have the questions raised. That is the value of going back over these individual cases. The process gives you hunches, as Dr. Atcheson says. We all have our hunches about what is going on, but it is around those questions that are never asked that the real danger lurks, and that is the value of your forum here; that is, having people come to answer questions that have not been debated publicly, or even asked publicly, or given any particular credence.

The Chairman: I have one more question of my own. I think you implied, in your answers to various questions about mental illness, that there were some theories to the effect that schizophrenia is a result of chemical imbalances in the composition of the body. Could you elaborate on that? How far back do they go? Do you just look at these things at the time the person runs afoul of the law, or should such possibilities be investigated earlier? Is this study far enough advanced, or well enough established to make the assessment of chemical factors part of routine investigation?

Dr. Barker: No. To my knowledge the studies have not gone that far. There is a division of opinion in psychiatry between those psychiatrists who believe that most cases of

schizophrenia are caused by environmental circumstances, and psychiatrists who believe that most cases of schizophrenia are caused biochemically. Most psychiatrists would think some cases are caused biochemically, and some environmentally. You do get that mixture. To my knowledge, the biochemical proponents are not yet at the stage of being able to establish with, say, the precision that exists in the case of pernicious anaemia, or other physical illnesses, some kind of laboratory screening test, like the Wassermann test, for example, for syphilis, that would routinely be done on admission. I think that is what you are suggesting, or hoping, that they may come up with something like that, and then that kind of public health screening procedure, moving on perhaps to a situation in which some kind of vaccination would be introduced. For some of the causes of mental retardation they do screening of urine, and so on, of course. However, I do not think it has been settled yet that all schizophrenia is biochemical in origin. I think most psychiatrists accept that some cases are due to a biochemical disturbance, but I do not think the work has progressed that far yet.

The Chairman: Would there be any merit, do you think, in requesting the authorities that are going to examine this little child that we have been talking about to have a look at that? To go back as far as they can into the child's history?

Dr. Barker: I tend to think not, because such investigations tend to focus on the individual perpetrator of a particularly violent act, and that, to me, shifts the focus away from where it ought to be. These startling acts catch our attention, and make us feel particularly sad, or outraged, or aggrieved, but I think that is misdirected energy. If all the energy or concern about a particular tragedy—in this case the boy, his family, the victim, and the victim's family—could go into looking at the wider picture out of which that family developed, I think we would be more profitably employed. I think we must shift to that. Clearly this boy is a symptom, as I see it, that should call our attention to the fact that something is wrong, and not to the fact that he individually needs treatment.

The Chairman: You are saying that he is more a product of society than of the particular physical factors or mental factors involved.

Dr. Barker: I cannot say so categorically without seeing the boy. Perhaps he has an inborn error in metabolism that led to his act, but all the people I have seen, or the majority of them, are a product of their environment, and it is precisely the environment—the family constellation, the level of poverty, and all of these other factors that add stress which distill out into the ultimate victim, and the notion that he be individual, somehow, is the object that needs to be treated is, I think, an incorrect one.

Senator Norrie: I have read several articles about the causes of crime, and they are very contradictory. One says that you can get more crime from affluent families than from poverty stricken areas, but I have read other that say the very reverse. What is your opinion?

Dr. Barker: I do not know. First of all, the patient population at Penetanguishene tends to be from the lower socio-economic group. It may well be that the crimes of violence in question are of a different order. Lower socio-economic groups tend to act out frustrations physically to a greater extent than you or I would. We play more psychologically violent games with one another.

When I was talking with the a Children's Aid official just lately, we discussed neglect and the emotional abuse of children, and the kinds of kids they see who are emotionally abused and neglected are from the lower socio-economic groups, but the wealthy can abuse and neglect their children emotionally in a socially acceptable fashion if they have the means to do it; so it is hard to pin down precisely. When you begin to try to define a violent act, whether it is just a punch in the mouth or strangling, it tends to get out into fuzzy areas, though I do not think this should deter us from getting back to the seedbeds of anger at fellow human beings.

Senator Norrie: It is unfair, really, to say that it is the affluent sector of society that contributes to crime more than the poverty area.

Dr. Barker: I would not say that now any more than I would say that permissiveness causes more problems than disciplinarianism. I am not sure that we know enough yet to pinpoint the factors involved. My hunch would be that it is the quality of the relationship with the parents that counts rather than whether they are strict or harsh, or spank or never spank.

Senator Norrie: It is wrong to blame one segment of society more than another.

Dr. Barker: There is a study that is really frightening, in the course of which a population was surveyed, and which pointed out that most mental illness, if I recall correctly, occurred in the lower socio-economic group, where those who did break down received poorer treatment and received it less frequently. There seemed to be a distillation downwards. On the other hand, of course, there are studies, and studies and studies.

Senator Bonnell: Mr. Chairman, one of the first crimes ever committed was because of starvation, when Adam and Eve ate a particular fruit. Since it is 12 o'clock, in case there should be any more violent crimes committed because of this, I would like to take this opportunity to thank Dr. Barker for his very excellent presentation and to say that I think that you, as Chairman, should write to Dr. Barker, thanking him for coming, including in the letter a request that he ask the CSPCC to present their views, and say what they might be able to do to help us orient ourselves with regard to future studies. We should then, I suggest, adjourn and go and enjoy dinner in the parliamentary restaurant and take Dr. Barker with us.

The Chairman: I think that is a very good suggestion.

Is it agreed that there are no further questions?

Hon. Senators: Agreed.

The Chairman: Before we adjourn, is the committee agreed that we do not need to call any further witnesses before making the report? I had hoped that we could make a report before the adjournment.

Senator Norrie: I am agreed.

Senator McGrand: You would have to have a general meeting of the committee, would you?

The Chairman: The first question to settle is, is Dr. Barker the last witness before we report?

Senator Bonnell: I do not believe so. In my opinion, we should decide on our report, then whether we need to hear

from more witnesses. We should not decide today to hear no more witnesses.

Senator McGrand: It seems to me that Dr. Barker is going to suggest names, and I also have some to submit to appear as witnesses. Perhaps we should go along as we are for a while.

The Chairman: This is your committee and I am in the hands of the committee. However, our terms of reference are very specific, to consider the feasibility of such an investigation. My own opinion is that we have heard sufficient witnesses now to come to a decision within our terms of reference. Then we must prepare a report to present to the Senate as to the feasibility or otherwise. If feasible, we must recommend how we should proceed. We are required by our terms of reference to do that. If we call further witnesses, very likely we will not conclude our deliberations before the adjournment. It is so difficult in the first place to get witnesses and then a time allocation in which to hear them. Following that, we must agree upon and prepare our report.

Senator Bonnell: I move that we report to the Senate that we have investigated the feasibility and agree that it is not only feasible but necessary to carry out this investigation. Also we should carry out a study into the future with respect to crime and violence up to three years.

Senator McGrand: I second the motion.

The Chairman: You have all heard the motion. Is it agreed?

Hon. Senators: Agreed.

Senator Smith (Queens-Shelburne): Unanimously.

The Chairman: Carried unanimously. That having been done, it so happens that next Wednesday we have a time allocation for a meeting after the Senate rises, which is usually occupied by the Special Committee on Science Policy, which is not meeting at that time. I will therefore endeavour to have a report prepared to be presented to the committee at that time.

Senator Bonnell: It is a very poor time, Mr. Chairman, because the next day, Thursday, is St. Jean Baptiste Day, and I can think of many senators sitting close to me who will wish to catch an early flight. I would suggest the following Wednesday, of Thursday morning.

The Chairman: Very well; that is two weeks from now.

Senator McGrand: The meeting should be held on a day when Senator Bonnell and Senator Norrie can be present. I can attend on any day, as far as I can see.

Senator Smith (Queens-Shelburne): We have not too many weeks left before the summer adjournment.

The Chairman: Time is running out.

Senator Norrie: Do we have to submit a detailed report?

The Chairman: No.

Senator Norrie: Would it be simply our motion?

The Chairman: We should report that we consider it to be feasible, and the type of committee we recommend should be established.

Senator Norrie: I am just wondering, because the number of witnesses who have been unfavourable has been more than those who have been favourable.

The Chairman: We must weigh the evidence among ourselves.

Senator McGrand: The only witness who has really discussed this problem has been Dr. Barker. Two sociologists have appeared.

The Chairman: Yes, and representatives of Statistics Canada.

Senator Norrie: Maybe this will have a detrimental effect on the presentation of our motion. It would be better if we had more than one witness such as Dr. Barker.

Senator Bonnell: We will dress the report up in a tuxedo; the chairman will present it to the committee and we will all support it.

Senator Norrie: You believe that, do you?

Senator Bonnell: Yes.

Senator Norrie: Do not let it fail.

Senator McElman: One turn of events may alter the whole situation. We are told that there is a possibility that a certain bill before the other place will fall—a very strong possibility. The scuttlebutt has it that if that should happen the other place will either adjourn this session or will wind it up the following day. In that event we will not have the opportunity to submit any report. Would you consider late Tuesday afternoon for our meeting? I do not believe the committee would take very long in dealing with the recommendation, favourably I suggest. The meeting should be held at four o'clock in the afternoon, or at whatever time will assure a large turnout of your committee, as should be in attendance on such an occasion. I simply express the fear that since we have no authority to proceed beyond the life of this session I would be sorry to see the whole matter die because we did not present our report as directed by the Senate as a whole.

The Chairman: That point is well taken.

Senator Bonnell: I agree.

The Chairman: Is five o'clock next Tuesday satisfactory as the time for the next meeting?

Hon. Senators: Agreed.

The committee adjourned.



Government
Publications

FIRST SESSION—THIRTIETH PARLIAMENT
1974-76

THE SENATE OF CANADA
PROCEEDINGS OF THE
STANDING SENATE COMMITTEE ON
**HEALTH, WELFARE
AND SCIENCE**

The Honourable C. W. CARTER, *Chairman*

Issue No. 18

TUESDAY, JUNE 22, 1976

Sixth Proceedings on:

The Study of the feasibility of a Senate Committee
inquiring into and reporting upon crime and
violence in contemporary Canadian society.

REPORT OF THE COMMITTEE

THE STANDING SENATE COMMITTEE ON
HEALTH, WELFARE AND SCIENCE

The Honourable C. W. Carter, *Chairman*

The Honourable M. Lamontagne, P.C., *Deputy
Chairman*

AND

The Honourable Senators:

Argue	Inman
Blois	Langlois
Bonnell	Macdonald
Bourget	McGrand
Cameron	Neiman
Croll	Norrie
Denis	*Perrault
*Flynn	Phillips
Fournier	Smith
(<i>de Lanaudière</i>)	(<i>Queens-Shelburne</i>)
Goldenberg	Sullivan—(20)

**Ex officio* member

(Quorum 5)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate of Canada, Thursday, 18th December, 1975:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator McGrand, seconded by the Honourable Senator Eudes:

That the Senate considers it desirable that a special committee of the Senate be established at an early date to inquire and report upon crime and violence in contemporary Canadian society.

And on the motion in amendment thereto of the Honourable Senator McElman, seconded by the Honourable Senator Carter:

That the motion be not now adopted but that the subject-matter thereof be referred to the Standing Senate Committee on Health, Welfare and Science,

After debate,

In amendment, the Honourable Senator Asselin, P.C., moved, seconded by the Honourable Senator Choquette, that the motion in amendment be amended by removing the period at the end thereof and adding the following words:

"and that the Committee be instructed to look into and report upon the feasibility of a Senate Committee's inquiring into and reporting upon crime and violence in contemporary Canadian society and that, if the Committee decides that such a study is feasible and warranted, it be further instructed to set down clearly how, by whom, and under what precise terms of reference such a study should be undertaken."

After debate, and—

The question being put on the motion, in amendment, of the Honourable Senator Asselin, P.C., seconded by the Honourable Senator Choquette, to the motion, in amendment, of the Honourable Senator McElman, seconded by the Honourable Senator Carter, it was—

Resolved in the affirmative.

The question then being put on the motion in amendment of the Honourable Senator McElman, seconded by the Honourable Senator Carter, as amended, it was—

Resolved in the affirmative."

Robert Fortier,
Clerk of the Senate.

Minutes of Proceedings

Tuesday, June 22, 1976
(22)

Pursuant to adjournment and notice the Standing Senate Committee on Health, Welfare and Science met this day, *in camera*, at 5:10 p.m., the Chairman, the Honourable C. W. Carter presiding.

Present: The Honourable Senators Bonnell, Bourget, Carter, Croll, Denis, Fournier (*de Lanaudière*), Langlois, McElman, McGrand, Neiman and Norrie. (11)

The Committee resumed consideration of its Order of Reference dated December 18, 1975, "that the Committee be instructed to look into and report upon the feasibility of a Senate Committee's inquiring into and reporting upon crime and violence in contemporary Canadian society and that, if the Committee decides that such a study is feasible and warranted, it be further instructed to set down clearly how, by whom, and under what precise terms of reference such a study should be undertaken.

The Committee proceeded to the consideration of its draft Report.

After discussion and on motion of the Honourable Senator McGrand, the Committee *agreed* to adopt the report as amended.

At 5:50 p.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Patrick Savoie,
Clerk of the Committee.

Report of the Committee

TUESDAY, June 22, 1976.

The Standing Senate Committee on Health, Welfare and Science, in obedience to its Order of Reference of December 18, 1975, has the honour to present the following report:

On May 14, 1975, the Honourable Senator McGrand moved "that the Senate considers it advisable that a special committee of the Senate be established at an early date to inquire and report upon crime and violence in contemporary Canadian society."

On December 18, 1975, the Senate referred the subject matter of Senator McGrand's motion to the Standing Senate Committee on Health, Welfare and Science and instructed the Committee "to look into and report upon the feasibility of a Senate committee's inquiring into and reporting upon crime and violence in contemporary Canadian society and that, if the Committee decides that such a study is feasible and warranted, it be further instructed to set down clearly how, by whom, and under what precise terms of reference such a study should be undertaken."

The Committee's task was threefold:

- (1) to determine the feasibility of the study contemplated;
- (2) if feasible, to determine whether such a study is warranted; and
- (3) if feasible and warranted, to outline how the study should be conducted.

It will be seen, therefore, that the key word is "feasibility". If the Committee decides the study is not feasible, then tasks (2) and (3) are eliminated.

The word "feasibility", however, embodies a number of variable factors. Thus a study that would not be feasible under one set of conditions and circumstances might prove feasible under a different set of conditions and circumstances.

In considering feasibility, your Committee took into consideration the nature of the subject to be considered as well as the time available, the facilities required (*space accommodation, staff, etc.*) and the present workload of Senate committees.

Your committee held six meetings and was fortunate to secure the services of Mr. Hugh Finsten and Mr. Gary Tait—two research officers on the staff of the Library of Parliament.

It soon became evident from the work of the research officers that the common factors influencing crime—pov-

erty, broken homes, unemployment, drugs, the penal system, lack of education and vocational training, etc.—are already well known and well documented. Consequently, a wide open inquiry into the causes of crime in Canada is neither feasible nor warranted.

However, in the course of the inquiry the Committee became aware that there was one area related to the causes of crime about which very little is known and which is now engaging the attention of research specialists in several countries, including the United States and France, where extensive work has been going on for several years. This area includes influences experienced in early childhood which may lead to violent and criminal behaviour later on.

This involves a more detailed account of the mother's health and condition during pregnancy, including the blood supply to the brain of the fetus, together with a more detailed account of the birth itself, as well as physical or psychological injuries sustained after birth.

Your committee heard the following witnesses: Dr. Michael Langley and Professor Bryan MacKay from the Department of Criminology, University of Ottawa; Dr. P. G. Banister, Bureau of Surveillance Services, Department of National Health and Welfare; Mr. Lorne Rowbottom, Household and Institutional Statistics Field, Mr. Marcel Préfontaine, Justice Statistics Division and Mr. Paul Reed, Justice Statistics Division, Statistics Canada; and Dr. E. T. Barker, Consultant, Mental Health Center (*Oak Ridge*), Penetanguishene, Ontario.

For the most part, their evidence indicated strong support for a restricted inquiry as outlined above and their opinions were greatly reinforced by a number of letters and submissions addressed to Senator McGrand from Gordon E. Warme, M.D., F.R.C.P.(C); Granville A. daCosta, M.D., F.R.C.P.(C); J. D. Atcheson, M.D., F.R.C.P.(C); (*three psychiatrists from the University of Toronto*); from Dr. B. A. Boyd, F.R.C.P.(C), Medical Director, Mental Health Center, Penetanguishene, Ontario; R. E. Stokes, M.D., D. Psych. F.R.C.P.(C), Director of Bracebridge Community Mental Health Service; C. K. McKnight, M.D., Chief of Service, Forensic, Clarke Institute of Psychiatry; Dr. John T. O'Manique, Professor of Philosophy at Carleton University and member of the Third Research Team for The Club of Rome; Dr. Eileen S. Whitlock, Executive Secretary, The National Association for the Advancement of Humane Education, University of Tulsa, Oklahoma, and Mr. Arthur Maloney, Q.C., Ombudsman for Ontario.

Your committee was convinced that such a restricted inquiry should not be undertaken by the Standing Senate

Committee on Health, Welfare and Science, nor by any other Senate Standing Committee, but rather by a very small special committee composed of not less than 6 nor more than 10 members who have a special interest in this problem.

The Committee suggests the following terms of reference:

THAT a Special Committee of the Senate, consisting of 8 senators be appointed to inquire into and report upon what is being done and what further avenues of research are required to detect factors occurring before or during the first three years of life which may lead to personality difficulties or violent behaviour in later life;

THAT the Committee have power to send for persons, papers and records and to print such paper and evidence from day to day as may be ordered by the Committee; and

THAT the Committee have power to engage the services of such counsel, technical and clerical personnel as may be required for the purpose of the inquiry.

It is envisaged that the Committee would utilise the services of the research staff of the Library of Parliament to write to top specialists of world reputation in this field and related areas and to analyze their replies. From this analysis the committee would select 6 to 8 witnesses so that the expenses involved would be kept to a minimum.

Your committee feels that such a special committee is feasible and that it is warranted by the necessity to focus attention on this gap in our knowledge of the causes of crime and violence and by the interest and stimulation of research that would result.

Respectfully submitted.

CHESTER W. CARTER,
Chairman.



FIRST SESSION—THIRTIETH PARLIAMENT
1974-76

THE SENATE OF CANADA

STANDING SENATE COMMITTEE

ON

HEALTH, WELFARE AND SCIENCE

The Honourable C. W. CARTER, *Chairman*

INDEX

OF PROCEEDINGS

(Issues Nos. 1 to 18 inclusive)



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Standing Senate Committee on Health, Welfare and Science
1st Session, 30th Parliament, 1974-1976

INDEX

Aerosol Cans

Fluorocarbons, environmental problems 10:13

Alcohol

See
Crime and Violence

Alexander, C. S., Legal Advisor, Environment Dept.

Bill C-25 10:6-18

Apse, Dr. J., Chief, Drugs Regulatory Affairs Division Drugs Directorate, Health Protection Branch, National Health and Welfare Dept.

Bill S-9 1:6-7, 10, 13

Archaeology

Protection, legislation 5:11-2, 27

Argue, Hon. Hazen, Senator (Regina)

Bill C-22 4:6-9

Art

See
Cultural Property

Atcheson, Dr. J. D., M.D., Senior Psychiatrist, Forensic Outpatient Dept., Clarke Institute of Psychiatry, Toronto

Submission to committee 15:19-34

Banister, Dr. P. G., Director, Bureau of Surveillance Ser- vices, National Health and Welfare Dept.

Background 15:5
Crime and violence, birth, childhood, influence 15:5-11

Barker, Dr. E. T., Consultant, Mental Health Centre (Oak Ridge), Ontario Ministry of Health, Penetanguishene

Crime and violence 17:5-17

Barrow, Hon. A. Irvine, Senator (Halifax-Dartmouth)

Bill C-75 11:6-7

Bélisle, Hon. Rhéal, Senator (Sudbury)

Bill C-4 3:8-9, 12
Bill C-33 5:10-1, 14
Bill C-37 6:18-9

Benidickson, Hon. W. M., Senator (Kenora-Rainy River)

Bill C-4 3:11-2

Bill C-4, Statute Law (Veterans and Civilian War Allow- ances) Amendment Act 1974

Advertising, campaign 3:10
Cost 3:10-1
Discussion 3:6-12
Provisions 3:6, 8-10
Report to Senate 3:5, 12
Royal Canadian Legion, opinion 3:6-7
See also
Veterans

Bill C-22, An Act to amend the Canada Pension Plan

Discussion 4:6-9
Provinces, consultation, opinion 4:8
Report to Senate 4:5
See also
Canada Pension Plan

Bill C-23, Lieutenant Governors Superannuation Act

Bill C-52, M.P.'s pensions, relationship 9:6-10
Purpose, provisions 9:6-10
Report to Senate, with recommendations 9:5, 9-10
See also
Lieutenant Governors

Bill C-25, Environmental Contaminants Act

Background, consultations 10:6, 11-2
Discussion 10:6-19
Other legislation, relationship 10:13
Purpose, operation 10:6, 13, 18-9
Report to Senate 10:5, 19
See also
Environmental Contaminants

Bill C-33, Cultural Property Export and Import Act

Amendments
Clause 8—Determination by expert examiner 5:5, 36
Clause 12—Alteration of permits by Minister 5:4, 25-6
Clause 15—Review Board established 5:4-5, 27-8
Clause 23—Requests for review by Review Board 5:5,
28-32, 36-7
Clause 26—Request for determination of Review
Board 5:5, 37

Discussion

Clause 1—Short title 5:7-10
Clause 2—Definitions, "institution" 5:10
Clause 3—Establishment of control list 5:10-2
Clause 4—Designation of permit officers 5:12
Clause 5—Designation of expert examiners 5:12
Clause 6—Immediate issue of export permit 5:12-3
Clause 8—Determination by expert examiner 5:13-25
Clause 14—General permits to export 5:26
Clause 15—Review Board established 5:26-7
Clause 20—Administrative services 5:28
Clause 24—Request for determination of fair offer to
purchase 5:32-3

Clause 29—Grants and loans from moneys appropriated 5:33-4

Clause 30—Canadian Heritage Preservation Endowment Account 5:34

Clause 32—Designation of cultural property 5:34-5

Clause 52—Commencement 5:35-6

Background, consultation 5:16, 18-22, 24

Effect, collectors 5:23-4

Purpose, provisions 5:7-9

Report to Senate, with amendments 5:6, 37

See also

Cultural Property

Bill C-37, Ocean Dumping Control Act

Application 6:5-13, 7:8, 12-3

Consultation, provinces 6:9, 7:9-12

Discussion 6:5-19; 7:6-14

French text, disposal of ships 6:11-8; 7:7-8

Purpose 6:5, 7, 14-5, 17-8; 7:7

Report to Senate 7:5, 14

See also

Ocean Dumping Control

Bill C-52, Statute Law (Superannuation) Amendment Act, 1975

Bill C-23, relationship, M.P.'s pensions 9:6-10

Bill C-75, Government Annuities Improvement Act

Discussion 11:6-7

Report to Senate 11:5, 7

Bill S-9, An Act to repeal the Proprietary or Patent Medicine Act and to amend the Trade Marks Act

Amendments

Clause 3—Commencement 2:8

Discussion 1:5-14; 2:6-8

Consultation

Pharmaceutical Association of Canada 2:7

Provinces 1:11, 14

Drug industry, effect 1:13-4; 2:7-8

Effective date 1:6, 13-4; 2:6-8

Proprietary Association of Canada, opinion 1:13; 2:7-8

Purpose 1:5-7; 2:6

Report to Senate, with amendment 2:5, 8

See also

Drugs

Bill S-28, An Act respecting the Royal Canadian Legion

Background 8:6

Discussion 8:6-11

Purpose 8:6

Report to Senate 8:5, 11

See also

Royal Canadian Legion

Bill S-31, An Act to amend the Quarantine Act

Discussion 14:6-11

Purpose, need 14:6-7

Report to Senate 14:5, 11

See also

Quarantine

Black, Dr. Lyall, Director General, Programs Management, Medical Services Branch, National Health and Welfare Dept.

Bill S-31 14:8-11

Blair, D. Gordon, Q.C., Parliamentary Agent, Royal Canadian Legion

Bill S-28 8:6-11

Bonnell, Hon. Lorne, Senator (Murray River)

Bill C-33 5:14-5, 24-6, 28-31, 33-6

Bill C-37 7:10-4

Bill S-31 14:7-11

Study of feasibility of Senate Committee inquiring into and reporting upon crime and violence in contemporary Canadian society 15:8-12; 17:6-8, 10-1, 14-5, 17-8

Bourget, Hon. Maurice, Senator (The Laurentides)

Bill C-22 4:7-9

Bill C-23 9:7-10

Bill C-25 10:8, 11, 17, 19

Bill C-33 5:10-2, 16, 18, 29, 31-4

Bill C-37 6:7, 9-19; 7:6-8, 10-3

Bill S-28 8:6-9, 11

Bill S-31 14:7-10

Study of feasibility of Senate Committee inquiring into and reporting upon crime and violence in contemporary Canadian society 15:8-9, 12

Boyd, Dr. B. A., M.D., Medical Director, Mental Health Centre, Ontario Ministry of Health, Penetanguishene Ont.

Letter to Committee 15:13

Brydon, Dr. J. E., Director, Environmental Contaminants Control Branch, Environment Dept.

Bill C-25 10:6-19

Burchill, Hon. G. Percival, Senator (Northumberland-Miramichi)

Study of feasibility of Senate Committee inquiring into and reporting upon crime and violence in contemporary Canadian society 17:13

Cadmium

Use 6:9

Cameron, Hon. Donald, Senator (Banff)

Bill C-33 5:11-2

Campbell, Coline, M.P., Parliamentary Secretary to Minister of National Health and Welfare

Bill C-22 4:6-9

Bill S-9

Discussion 1:6, 8, 10-1, 13; 2:7-8

Statement 1:5-6; 2:6

Canada Pension Plan

Administration 4:7

Amount, increase 4:6-8

Appeal Board, increase 4:7

Application, age limit 4:9
 Basic exemption, determination 4:7
 Contributions, age limit, requirements 4:7-8
 Equality, male, female 4:6
 Means test, repealed 4:6
 Overpayments, recovery 4:9
 Pensionable earnings, maximum, determination 4:6
 Qualifying period, maximum benefit 4:6
 Retroactive payments 4:8-9
 Spouse, children, death benefits 4:8
 Welfare benefits, deducted 4:9

Canada Pension Plan, An Act to amend

See
 Bill C-22

Canada Shipping Act

Ocean Dumping 6:6, 8-11

Canada's Mental Health

Vol., "Action for Mental Health" reviewed 17:9

Canadian Society for the Prevention of Cruelty to Children

Organization, role 17:5, 15-6

Capital Gains Tax

Cultural property 5:23, 32

Carter, Hon. Chesley W., Senator (The Grand Banks), Committee Chairman

Bill C-4 3:6-12
 Bill C-22 4:6-9
 Bill C-23 9:6, 8-10
 Bill C-25 10:6, 8, 10, 14-9
 Bill C-33 5:7, 9-10, 12, 14, 16, 20-1, 24-37
 Bill C-37 6:5, 9-17, 19; 7:6-14
 Bill C-75 11:6-7
 Bill S-9 1:9-10, 12, 14; 2:6-8
 Bill S-28 8:6, 8, 10-1
 Bill S-31 14:6-11
 Study of feasibility of Senate Committee inquiring into and reporting upon crime and violence in contemporary Canadian society 12:5-11; 13:5-6, 10-1, 15, 17-21; 15:5-12; 16:5-10; 17:5, 11, 15-8

Carton, J. C., Director of Legal Services, Environment Dept.

Bill C-37 7:10-4

"The Causes of Crime and Violence: influence in early childhood"

Research Paper, H. Finsten, G. Tait 12:4-6, 10-1; 17:5-6, 16

Children

Day care, facilities, psychological effects 15:30-2
 Euthanasia, birth damage 17:8
 High handicap risk infants 15:32-4
 Mental, emotional illness, prevention, study 15:20-30
 See also
 Crime and Violence

Cities

See
 Municipalities

Civilian War Pensions and Allowances Act

Deep Sea Rescue Tug service, excluded 3:7

Civilian War Pensions and Allowances Act, An Act to amend

See
 Bill C-4

Clark, H. D., Director, Pensions and Insurance Division, Treasury Board Secretariat

Bill C-23 9:6-10

Clark, Ian C., Special Advisor, Arts and Culture, Secretary of State Dept.

Bill C-33 5:10-3, 19-37

Commonwealth Parliamentary Association

Committee, crime and violence in youth 15:11

Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter

Purpose, provisions, ratification 6:5-10, 17-8; 7:8, 11
 See also
 Ocean Dumping Control

Correctional Institutions

See
 Crime and Violence

Covacs, A., Chief, Translation Bureau, Justice Dept.

Bill C-37 6:16-7

Crime and Violence

Alcohol, drug abuse, relationship 17:10-1
 Birth methods, conditions, influence 12:6-8; 13:7, 16; 15:5-10; 16:7-9; 17:7-8, 16; 18:5
 Defects, genetic influences 15:5-7; 17:7-8
 Children
 Abnormal personality development, treatment 15:19-20
 Abuse 12:6-7; 13:12; 15:5-6; 17:17
 Experiences, influence 12:6-7, 9; 13:12, 15-7; 15:5-7, 9, 14-6, 19-20; 16:6-10; 17:5-8, 10, 12-5, 17; 18:5
 Prediction of behaviour 13:5, 18-20; 15:19; 17:6-7
 Commonwealth Parliamentary Assoc. committee 15:11
 Control, priorities necessary 13:7; 15:17
 Correctional institutions
 Incarceration, rate, length 15:17
 Prisons, trends, effect 13:9-10; 17:14
 Psychiatric treatment 17:11-2
 Rehabilitation, behaviour modification 15:14, 17
 Training Schools (juveniles) 13:10-5, 17
 Cruelty, sadism 12:6; 13:18-9
 Cruelty to animals, relationship 15:15-6
 Economic, social system, relationship 15:35; 17:12-3, 17
 Education 13:6, 8-9, 20-1; 15:15
 Ethnic, religious, communities 13:16-7; 15:7

Feasibility of Senate Committee inquiry

- Cost, facilities, staff 12:8-9; 18:5
- Discussion 12:5-11; 13:5-21; 15:8-9, 17, 35; 17:5-6, 8, 11
- Focus, pregnancy, birth, childhood 17:7, 14-5; 18:5-6
- National Health and Welfare Dept. study proposed 15:10-1
- Purpose, role 12:7-9; 13:7-8, 11, 20-1; 15:6, 11; 17:16
- Report to Senate 17:4, 18; 18:4-6
- Research papers prepared 12:4-6, 10-1; 17:5-6, 16
- Senate reference 12:3, 5; 17:18; 18:5
- Special committee proposed 18:5-6
- Subcommittee proposed 12:9-10
- Submissions to Committee 15:13-35
- Suitability of subject matter 12:6-10
- Witnesses 12:7, 9-10; 15:12; 17:11, 15-8; 18:5-6

Firearms

- Legislation, effect 13:8
- Use, effect on behaviour 13:7, 9

Juvenile delinquency

- Child abuse, relationship 13:12
- Control, prevention 13:11-3, 19-21
- Ethnic, religious, communities 13:17
- Group behaviour 13:18
- Prediction 13:19-20
- Sadism, murder 13:18-9
- Social class, relationship 13:14-5
- Statistics 16:6-7
- Training schools 13:10-5, 17; 16:7
- Working mothers, effect 13:17-8

Mental illness, relationship 17:9-10, 13-4, 16-7**Murder**

- "Family crimes" 17:14
- Penalty, effect rehabilitation 17:9-10

Poulin inquest 13:7-8

- Prediction of behaviour 13:5, 18-20; 15:19; 17:6-7
- Pre-natal influences 12:6-7; 13:16; 15:5, 9; 16:7; 18:5
- Preventive criminology 13:20; 15:9-12, 17; 17:5-7, 12-3
- Provincial jurisdiction, health, welfare, education, relationship 15:9-10
- Research, available, proposed 12:4-11; 13:6-8, 21; 15:6-13, 15-7, 19; 16:7-10; 17:16
- Statistics Canada 15:9; 16:5-10
- Rural-urban, comparison 13:16-7
- Social mores, change, influence 17:8
- Television violence, effect 13:16; 17:15

See also

- Children
- Mental Illness

Criminology*See*

- Crime and Violence
- Preventive Criminology
- Research

Croll, Hon. David A., Senator (Toronto-Spadina)

- Bill C-4 3:7-8, 10
- Bill C-23 9:7-10
- Bill C-25 10:6-7, 9, 13-4, 17, 19
- Bill C-28 8:6-7, 9-11
- Study of feasibility of Senate Committee inquiring into and reporting upon crime and violence in contemporary Canadian society 12:5, 8-11; 13:6; 15:7-10, 12; 17:8-11

Cultural Property**Export**

- Control list 5:10-5, 26, 29-30
- Foreign origin 5:8-9, 17-23
- Illegal, recovery 5:34-5
- Minister, powers, alteration permits 5:14-5, 25-6, 28-9
- Permits 5:9, 12-4, 25-7
- Review Board 5:7, 9, 12-6, 26-33, 36-7
- National Heritage, protection 5:10-1, 25-6, 30, 34
- Sale in Canada
 - Fair offer, determination 5:32-3
 - Financial assistance 5:11, 33-4
 - Tax benefits 5:19-20, 23-4, 32-3

Cultural Property Export and Import Act*See*

- Bill C-33

Curran, R. E., Q.C., Counsel, Proprietary Association of Canada

- Bill S-9 1:13-4; 2:7-8

da Costa, Dr. Granville A., Staff Psychiatrist, Child and Adolescent Service, Clarke Institute of Psychiatry, Toronto

- Submission to committee 15:19-34

Day Care*See*

- Children

Denis, Hon. Azellus, Senator (La Salle)

- Bill C-22 4:6-8
- Bill C-25 10:9-10, 16
- Bill C-37 6:14-5, 17-8; 7:7
- Bill S-9 1:12, 14; 2:6, 8
- Bill S-28 8:7-8
- Study of feasibility of Senate Committee inquiring into and reporting upon crime and violence in contemporary Canadian society 15:10

Drugs

- Dangerous, control 1:7-11
- Ineffective, control 1:10-1
- OTC (Over the counter), regulations 1:5, 9
- Patent medicines, definition 1:11
- Prepared by physicians, regulations 1:9
- Prescription, criteria 1:9
- Proprietary medicines

Advertising

- Defined 1:12
- Regulations 1:7-8, 10, 12-3
- Studies 1:8
- Alcohol content, control 1:12-3
- Expiry date, regulations 1:7, 11-2
- Formula preclearance 1:13
- Labelling regulations 1:5, 7-9, 11-3
- Promotion, defined 1:12
- Sale, regulations 1:5-14; 2:6-7
- Scientific review 1:6, 8-9, 11

Self-medication, value 1:13

See also

Proprietary . . .

du Plessis, R. L., Acting Assistant Law Clerk and Parliamentary Counsel

Bill C-25 10:16-7

du Plessis, R. L., Justice Dept., Legal Adviser to Committee

Bill C-33 5:30-2, 37

Bill C-37 6:13-5; 7:13

Emotional Illness

See

Mental Illness

Environment Dept.

Vessel purchases 6:11

See also

Environmental Protection Service

Fisheries and Marine Service

Environmental Contaminants

Control

Board of review 10:7, 14-5

Emergency provision 10:10-1, 15

Environment, Health and Welfare Depts., role 10:13-4, 18

Industry, effect 10:7

Information provisions, testing 10:6, 17-9

International cooperation 10:13

Legislation, other countries 10:12-3

Mercury pollution, effect 10:8

Offences, penalties 10:9-11, 15-7

Procedures 10:6, 13, 18-9

Provinces, relationship 10:6-11, 18

Release 10:6-9

See also

Specific substances

Environmental Contaminants Act

See

Bill C-25

Environmental Protection Service

Ocean Dumping Permits 6:10

Waste disposal 7:9

Euthanasia

See

Children

Faulkner, Hon. Hugh, Secretary of State of Canada

Bill C-33

Discussion 5:9-16

Statement 5:7-9

Finsten, Hugh, Research Officer, Research Branch, Library of Parliament

Research paper 12:4-6, 10-1; 17:5-6, 16

Witnesses introduced 13:5

Firearms

See

Crime and Violence

Fisheries and Marine Service

Research, ocean monitoring 6:6; 7:8-9

Fluorocarbons

Environmental problems 10:13

Flynn, Hon. Jacques, Senator (Rougemont)

Bill C-23 9:6-10

Food and Drugs Act and Regulations

Advertising, control 1:10

Proprietary medicines, inclusion 1:5-8, 11-4; 2:7

Purpose, scope 1:5-6, 11

Regulations, review 1:11

Fournier, Hon. Sarto, Senator (de Lanaudière)

Bill C-4 3:9

Bill C-23 9:7

Bill C-25 10:9-11, 13, 18

Bill C-33 5:7, 27

Bill C-37 6:5-19; 7:6-9, 12

Study of feasibility of Senate Committee inquiring into and reporting upon crime and violence in contemporary Canadian society 16:6-7, 9-10

Geoffrion, R. L., Legislation Section, Justice Dept.

Bill C-37 6:16-8; 7:7-8

Government Annuities Improvement Act

See

Bill C-75

Haig, Hon. J. Campbell, Senator (River Heights)

Bill C-22 4:6-8

Hanmer, H., Director, Service Bureau, Royal Canadian Legion

Bill C-4 3:7-8, 10-1

Health Welfare and Science Standing Senate Committee

In camera proceedings 5:26; 18:4

Motion

Publication proceedings, feasibility of Senate

Committee inquiry into crime and violence 12:4-5

Procedure 5:7, 9-10; 6:18-9; 7:6-7; 17:18

"The High Risk Infant"

Ontario Psychiatric Assoc. subcommittee on child psychiatry position paper 15:32-4

Hopkins, Russel E., Law Clerk and Parliamentary Counsel

Bill C-22 4:6-8

Income Tax Act

Cultural property 5:20

- Influenza**
Control 14:7
- Inman, Hon. F. Elsie (Murray Harbour)**
Bill C-4 3:8, 10-1
Bill C-22 4:6, 8-9
Bill C-23 9:8-9
Bill C-33 5:12
Bill C-37 6:8-9
Bill S-9 1:7, 9, 12; 2:8
- Intergovernmental Maritime Consultative Organization**
Operational discharges, ships 6:8, 11
- International Health Regulations**
See
World Health Organization
- Juvenile Delinquency**
See
Crime and Violence
- Kaplan, Bob, M.P., Parliamentary Secretary to Minister of National Health and Welfare**
Bill S-31 14:6-11
- Kelm, W. A., Director, Planning and Development Division, Canada Pension Plan Branch, National Health and Welfare Dept.**
Bill C-22 4:6-9
- Lamontagne, Hon. Maurice, Senator (Inkerman)**
Bill C-33 5:7, 9-20, 37
- Lamy, J. E. A., Dominion Secretary, Royal Canadian Legion**
Bill S-28 8:9-11
- Langley, Dr. Michael, Dept. of Criminology, University of Ottawa**
Background 13:5
Crime and violence 13:5-21
- Langlois, Hon. Léopold, Senator (Grandville)**
Bill C-37 6:14-6
- Lassa Fever**
Control, Canadian action 14:6-10
- Lead**
Emissions, Toronto company, control 10:9
- Leprosy**
Control 14:9
- Lieutenant Governors**
Pensions 9:6-10
Cost of living increase 9:8-9
- Lieutenant Governors Superannuation Act**
See
Bill C-23
- Liston, Dr. B., Acting Assistant Deputy Minister, Health Protection Branch, National Health and Welfare Dept.**
Bill S-9 1:6-13; 2:7-8
- London Convention**
See
Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter
- Macaulay, Ian D., Division of Ocean Science Affairs, Oceanography Branch, Environment Dept.**
Bill C-37 6:5-15; 7:8-14
- McDonald, Douglas, First Vice-President, Dominion Command, Royal Canadian Legion**
Bill S-28 8:6-11
- Macdonald, Hon. John M., Senator (Cape Breton)**
Bill C-4 3:9
Bill C-25 10:9-10
Bill C-37 6:6-7, 9-10, 13-6
Bill C-75 11:7
Bill S-9 1:7-11, 13
Bill S-28 8:7, 9-10
- McElman, Hon. Charles, Senator (Nashwaak Valley)**
Study of feasibility of Senate Committee inquiring into and reporting upon crime and violence in contemporary Canadian society 12:9-10; 13:7, 9-10, 12, 15-20; 15:8-10-1; 17:11-6, 18
- McGrand, Hon. Fred A., Senator (Sunbury)**
Bill C-25 10:19
Bill C-33 5:11-2, 23
Bill C-37 6:7-8
Bill S-31 14:8-9
Study of feasibility of Senate Committee inquiring into and reporting upon crime and violence in contemporary Canadian society 12:6-9; 13:6-9, 12, 15-9, 21; 15:6-12; 16:6-8, 10; 17:6-7, 12, 14, 16-8
- McKay, Prof. Bryan, Dept. of Criminology, University of Ottawa**
Background 13:5
Crime and violence 13:5-21
- McKnight, Dr. C. K., M.D., Chief of Service, Forensic, Clarke Institute of Psychiatry, Toronto**
Letter to Committee 15:17-8
- Malcolmson, H. A., Toronto**
Background 5:15
Bill C-33 5:16-25
- Martineau, Louis, Translation Bureau, Justice Dept.**
Bill C-37 7:7-8
- Mental Illness**
Acceptance 17:10
Children
Abnormal personality development, treatment 15:19-20
Prevention, study 15:20-30

- Crime and violence, relationship 17:9-10, 13-4
 Schizophrenia, causes 17:16-7
 Treatment 17:9-12, 17
- Mercury**
 Environmental problems, Bill C-25 effect 10:8, 10-1
- Monteith, John R., Chief, Hazardous Material Management, Environmental Protection Service, Environment Dept.**
 Bill C-37 6:7-11; 7:9-14
- Municipalities**
 Disposal of waste, snow 7:9, 11-3
- Murder**
See
 Crime and Violence
- Murphy, Lois Barclay**
 Study, "Preventive Implications of Development in the Preschool Years" 15:20-30
- National Health and Welfare Dept.**
 Drugs
 Advertising studies 1:8
 Review, Health Protection Branch 1:6, 9-10
- National Heritage**
 Protection, cultural property 5:10-1, 25-6, 30, 34
See also
 Cultural Property
- Neiman, Hon. Joan, Senator (Peel)**
 Bill C-25 10:8, 13
 Bill C-37 6:6-13, 15-6
 Study of feasibility of Senate Committee inquiring into and reporting upon crime and violence in contemporary Canadian society 12:5, 7-11; 13:7-8; 16:6; 17:7, 11-2
- Netherlands**
 Prison system 13:9-10
- Norrie, Hon. Margaret, Senator (Colchester-Cumberland)**
 Bill C-4 3:9-11
 Bill C-23 9:8
 Study of feasibility of Senate Committee inquiring into a reporting upon crime and violence in contemporary Canadian society 12:8-9; 13:9-14, 17; 15:10-2; 16:7, 9-10; 17:14-5, 17
- Ocean Dumping Control**
 Accidental, emergency 6:9-10, 15; 7:11
 Alternatives 7:9
 Current practices 6:9; 7:8
 Disposal on ice 6:5, 15, 17; 7:11-2
 Dredged material 6:9, 11; 7:8
 Enforcement, penalties, court procedure 6:6-7, 9-11; 7:10-1, 13-4
 Foreign vessels 6:6-9
 Incineration at sea 6:5
 International waters 6:6-7, 10, 12-3; 7:11
 London Convention 6:5-10, 17-8; 7:8, 11
 Monitoring dumping, effects 7:8-9
 Operational discharges 6:8-9, 11
 Permits 6:5, 7-13; 7:8-10, 13
 Provinces, co-operation 7:9-10, 13
 Ships, disposal of 6:11-8; 7:7-8
 Snow, disposal of 7:11-3
- Ocean Dumping Control Act**
See
 Bill C-37
- Old Age Security**
 Retroactive payments 4:9
- O'Manique, Dr. John T., Ph.D., Associate Professor of Philosophy, Carleton University; Member, Third Research Team for the Club of Rome**
 Letter to committee 15:35
- Ontario Psychiatric Association**
 Subcommittee on child psychiatry position papers 15:30-4
- PCB's**
See
 Polychlorinated Biphenyls
- Pension Act**
 Provisions 3:8-9, 11-2
- Pharmaceutical Association of Canada**
 Bill S-9, consultation 2:7
- Phillips, Hon. Orville H., Senator (Prince)**
 Bill S-28 8:7, 10
 Study of feasibility of Senate Committee inquiring into and reporting upon crime and violence in contemporary Canadian society 16:7-8
- Plague**
 Control 14:10
- Polychlorinated Biphenyls**
 Environmental problems 10:7-8
- Popp, A. H. E., Legislation Section, Justice Dept.**
 Bill C-37 6:18
- Prefontaine, Marcel, Director, Justice Statistics Division, Statistics Canada**
 Criminal Statistics 16:6-8
- "Preventive Implications of Development in the Preschool Years"**
 Study, Lois Barclay Murphy 15:20-30
- Prisons**
See
 Crime and Violence. Correctional Institutions

Proprietary Association of Canada

- Bill S-9, opinion 1:13; 2:7-8
- Membership 1:13

Proprietary Medicines

- See*
- Drugs

Proprietary or Patent Medicine Act

- Purpose, scope 1:5-6, 13

Proprietary or Patent Medicine Act, An Act to repeal

- See*
- Bill S-9

Prowse, Hon. J. Harper, Senator (Edmonton)

- Bill C-4 3:8-9, 11

Quarantine

- Administration, enforcement, quarantine officers 14:7-8, 10
- Dangerous diseases, control 14:6-9
- Detention 14:6, 8-11
- International Health Regulations, WHO 14:6-10

Quarantine Act, An Act to amend

- See*
- Bill S-31

Reed, P., Assistant Director, Justice Statistics Division, Statistics Canada

- Criminal statistics 16:8-10

Reports to Senate

- Bill C-4 3:5
- Bill C-22 4:5
- Bill C-23, with recommendation 9:5
- Bill C-25 10:5
- Bill C-33, with amendments 5:6
- Bill C-37 7:5
- Bill C-75 11:5
- Bill S-9, with amendment 2:5
- Bill S-28 8:5
- Bill S-31 14:5
- Feasibility of Senate Committee inquiry into crime and violence 18:5-6

Rowebottom, Lorne, Assistant Chief Statistician, Household and Institutional Statistics Field, Statistics Canada

- Criminal statistics 16:5-10

Royal Canadian Legion

- Bill C-4, opinion 3:6
- Branches
 - Autonomy 8:9
 - Property rights 8:6-7, 9-10
- Bursaries 3:10
- Government grants, tax exemptions 8:10
- Ladies' auxiliaries 8:8-9
- Membership, fees 8:10

- Organization, Commands defined 8:7-8, 11
- Presidents of Commands, authority 8:9-10
- Property value, total 8:10
- Service Bureau 8:10
- Veterans' benefits
 - Improvements proposed 3:6-7
 - Review committee proposed 3:7

Royal Canadian Legion, An Act respecting

- See*
- Bill S-28

Schizophrenia

- See*
- Mental Illness

Senate Committee inquiry into crime and violence (proposed)

- See*
- Crime and Violence. Feasibility...

Smallpox

- Control, world situation 14:9-11

Smith, Hon. Donald, Senator (Queens-Shelburne), Committee Acting Chairman

- Bill C-23 9:9
- Bill C-25 10:11-2, 16
- Bill C-33 5:27, 37
- Bill C-75 11:7
- Bill S-9 1:5-6, 8, 11-4
- Bill S-31 14:9-10
- Study of feasibility of Senate Committee inquiring into and reporting upon crime and violence in contemporary Canadian society 12:10-1; 13:7, 12-5; 15:12; 17:11, 18

Social Assistance

- See*
- Welfare Programs

Sprenger, Dr. R. A., Senior Consultant, Quarantine and Regulatory, Medical Services Branch, National Health and Welfare Dept.

- Bill S-31 14:8, 11

Statistics Canada

- Criminal statistics 15:9; 16:5-10

Statute Law (Superannuation) Amendment Act, 1975

- See*
- Bill C-52

Statute Law (Veterans and Civilian War Allowances) Amendment Act, 1974

- See*
- Bill C-4

Steele, D. J., Executive Director, Services Branch, Unemployment Insurance Commission

- Bill C-75 11:6-7

Stokes, Dr. R. E., M.D., Bracebridge Community Mental Health Service

Letter to committee 15:14

Sullivan, Hon. Joseph A., Senator (North York)

Bill S-9 1:6-13

"Supplemental Care"

Ontario Psychiatric Assoc. subcommittee on child psychiatry position paper 15:30-2

Tait, Gary, Research Officer, Research Branch, Library of Parliament

Research paper 12:4-6, 10-1; 17:5-6, 16

Thompson, D. M., Chairman, War Veterans Allowance Board

Bill C-4 3:7-12

Toft, Dr. Peter, Chief, Environmental Standards Division, Bureau of Chemical Hazards, National Health and Welfare Dept.

Bill C-25 10:6, 13-4, 18

Trade Marks Act, An Act to amend

See

Bill S-9

Veterans

Allowances

- Age requirement, male-female, difference 3:8
- Children, payments, qualifying age 3:9-10
- Common law relationships, children, married rate 3:8-9
- Eligibility 3:8, 11
- Income levels, variety 3:6
- Other income, effect 3:9, 11
- Payments, number recipients 3:9
- Provincial supplements 3:10
- Widows, age, rate 3:7, 11-2

Assistance fund 3:6, 11

Benefits

- Canadian residence requirement 3:6
- Children, education 3:9-10
- Deep Sea Rescue Tug service, excluded 3:7
- Equality, male-female 3:6, 8
- Improvements proposed, Royal Canadian Legion 3:6-7
- Indexed, cost of living 3:12
- Qualifying Service, United Kingdom, World War I 3:6-7

Review committee proposed, Royal Canadian Legion 3:7

Disability pension

- Eligibility 3:8
- Rate, basis, committee report 3:7-8

Pensions

- Orphans 3:11
- Widows, children 3:11-2

Widows benefits, allowance act, pension act, comparison 3:11-2

See also

War Veterans Allowance Act

Violence

See

Crime and Violence

WHO

See

World Health Organization

War Veterans

See

Veterans

War Veterans Allowance Act

Payments, number recipients 3:9

Provisions 3:8-12

War Veterans Allowance Act, An Act to amend

See

Bill C-4

Warne, Gordon E., M.D., Chief, Child and Adolescent Service, Clarke Institute of Psychiatry, Toronto

Submission to committee 15:19-34

Welfare Programs

Federal-provincial agreements, recovery of overpayments 4:9

Whitlock, Dr. Eileen S., Assistant Executive Secretary, The National Association for the Advancement of Humane Education, University of Tulsa, U.S.A.

Letter to committee 15:15-6

Willis, Alan Legal Services, Environment Dept.

Bill C-37 6:6-11, 14-6

World Health Organization

International Health Regulations, quarantinable diseases 14:6-10

York University

Drugs, advertising, studies 1:8

Appendices

Issue 15

- No. 1—Letter, Dr. B.A. Boyd, Medical Director, Mental Health Centre, Ontario Ministry of Health, Penetanguishene, Ont. 15:13
- No. 2—Letter, Dr. R.E. Stokes, M.D., Bracebridge Community Mental Health Service 15:14
- No. 3—Letter, Dr. Eileen S. Whitlock, Assistant Executive Secretary, The National Association for the Advancement of Humane Education, University of Tulsa, U.S.A. 15:15-6
- No. 4—Letter, Dr. C.K. McKnight, M.D., Chief of Service, Forensic, Clarke Institute of Psychiatry, Toronto 15:17-8

No. 5—Submission, Dr. Gordon E., Warme, M.D., Dr. Granville A. da Costa, M.D., and Dr. J.D. Atcheson, M.D., Clarke Institute of Psychiatry, Toronto 15:19-34

No. 6—Letter, Dr. John T. O'Manique, Ph.D., Associate Professor of Philosophy, Saint Patrick's College, Carleton University; Member, Third Research Team, Club of Rome 15:35

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—Willis, Alan, Legal Services, Environment Dept.

For pagination, see Index by alphabetical order.

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Publication

